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61st CONGRESS }
3d Session }

SENATE

{ DOCUMENT
{ No. 719

INVESTIGATION
OF THE
DEPARTMENT OF THE INTERIOR
AND OF THE
BUREAU OF FORESTRY

IN THIRTEEN VOLUMES
VOLUME 10
CUNNINGHAM COAL ENTRIES

WASHINGTON
GOVERNMENT PRINTING OFFICE
1911

AM 171
E10

MEMBERS OF THE JOINT COMMITTEE.

KNUTE NELSON, Minnesota, Chairman.

SAMUEL W. McCALL, Massachusetts, Vice-Chairman.

FRANK P. FLINT, California.

MARLIN E. OLMSTED, Pennsylvania.

GEORGE SUTHERLAND, Utah.

EDWIN DENBY, Michigan.

ELIHU ROOT, New York.

E. H. MADISON, Kansas.

DUNCAN U. FLETCHER, Florida.

OLLIE M. JAMES, Kentucky.

WILLIAM E. PURCELL, North Dakota.

JAMES M. GRAHAM, Illinois.

PAUL SLEMAN, Secretary.

CONCURRENT RESOLUTION.

Resolved by the Senate (the House of Representatives concurring), That there be printed as a document for the use of the Senate and House of Representatives three thousand copies of the report of the committee and the views of the minority and the evidence taken, together with appendices, in the investigation made pursuant to Public Resolution Numbered Nine, approved January nineteenth, nineteen hundred and ten, authorizing an investigation of the Department of the Interior and its several bureaus, officers, and employees, and of the Bureau of Forestry, in the Department of Agriculture, and its officers and employees, one thousand for the use of the Senate and two thousand for the use of the House of Representatives, and that there be printed in one volume thirty thousand additional copies of the report of the committee and the views of the minority, ten thousand for the use of the Senate and twenty thousand for the use of the House of Representatives.

Attest:

CHARLES G. BENNETT,
Secretary of the Senate.

W. M. N. Feb. 11, 1911.

IN THE DEPARTMENT OF THE INTERIOR BEFORE THE GENERAL LAND OFFICE.

In the matter of the inquiry concerning the legality of coal land entries numbers one to thirty-three, both inclusive, in the Juneau land district, made and claimed, respectively, by Andrew L. Scofield, Francis Jenkins, Charles J. Smith, Horace C. Henry, Ignatius Mullen, Henry White, Henry W. Collins, Fred C. Davidson, Michael Doneen, Frank F. Johnson, John G. Cunningham, Clarence Cunningham, A. B. Campbell, Henry Wick, Hugh B. Wick, Fred H. Mason, William E. Miller, Charles Sweeney, Byron C. Riblett, Fred Cushing Moore, Alfred Page, W. W. Baker, Frederick Burbidge, Reginald K. Neill, Joseph H. Neill, Miles C. Moore, John A. Finch, Walter B. Moore, Arthur D. Jones, Orville D. Jones, W. H. Warner, Frank A. Moore, Nelson B. Nelson.

RECORD AND REPORT OF PROCEEDINGS HAD AND EVIDENCE SUBMITTED UPON THE INQUIRY BEFORE WILLIAM J. MCGEE, SPECIAL COMMISSIONER.

HELD AT SEATTLE, WASH., AND SPOKANE, WASH., COMMENCING ON NOVEMBER 18, 1909, AND ENDING DECEMBER 13, 1909.

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INQUIRY.

NOVEMBER 18, 1909—10 A. M.

Appearances: Hon. William J. McGee, United States special commissioner; Mr. James M. Sheridan and Mr. William P. Pugh, counsel for the Government; Mr. E. C. Hughes and Mr. John P. Gray, counsel for claimants.

Now, on this 18th day of November, 1909, at 10 o'clock a. m. of said day, in the United States circuit court room in the federal building, in the city of Seattle, State of Washington, appeared Hon. William J. McGee, detailed clerk and special commissioner appointed by the Secretary of the Interior, and produced the written instructions and authorization under which this inquiry is to be held, an authenticated copy of which was filed and directed to be preserved as a part of the record in said inquiry.

And thereupon the following proceedings were had:

Mr. SHERIDAN. Your honor, we have just received word from Mr. Hughes, associate counsel for the claimants in this inquiry, that the train upon which Mr. John P. Gray, of Wallace, Idaho, was to arrive this morning was about an hour late. As a result, Mr. Hughes requests that we adjourn until 2 o'clock this afternoon, at which time he and Mr. Gray will be present. I wish to place on record the fact that the government representatives are all present at this time; and if it meets with your approval, we are willing to adjourn until 2 o'clock this afternoon.

The COMMISSIONER. With that understanding, this case will be adjourned until 2 o'clock this afternoon.

(Adjournment thereupon taken until 2 p. m. November 18, 1909.)

INQUIRY RESUMED.

NOVEMBER 18, 1909—2 P. M.

Appearances: Hon. William J. McGee, United States special commissioner; Mr. James M. Sheridan and Mr. William B. Pugh, counsel for the Government; Mr. E. C. Hughes and Mr. John P. Gray, counsel for claimants.

The COMMISSIONER. Are you ready to proceed, gentlemen?

Mr. HUGHES. Yes.

Mr. SHERIDAN. Yes.

The COMMISSIONER. Mr. James M. Palmer and William W. Greene, having been designated as the reporters of this proceeding, will now take the oath—if they will stand up. Raise your right hands.

(Reporters sworn.)

Mr. SHERIDAN. We have here, your honor, the first papers in the record of this case, namely, the stipulation, the charges on the basis of which this inquiry is to be conducted, the notice to produce documents desired for use as evidence, and two letters of appointment of William J. McGee, chief law clerk, section of government contests, General Land Office, which we now offer as the preliminary part of the record, subject to the objection of opposing counsel.

IN THE DEPARTMENT OF THE INTERIOR.

BEFORE THE GENERAL LAND OFFICE.

In the matter of the inquiry concerning the legality of coal-land entries Nos. 1 to 33, both inclusive, in the Juneau land district in the Territory of Alaska, Kayak recording district, made and claimed, respectively, by Andrew L. Scofield, Francis Jenkins, Charles J. Smith, Horace C. Henry, Ignatius Mullen, Henry White, Henry W. Collins, Fred C. Davidson, Michael Doneen, Frank F. Johnson, John G. Cunningham, Clarence Cunningham, A. B. Campbell, Henry Wick, Hugh B. Wick, Fred H. Mason, William E. Miller, Charles Sweeney, Byron C. Riblett, Fred. Cushing Moore, Alfred Page, W. W. Baker, Frederick Burbidge, Reginald K. Neill, Joseph H. Neill, Miles C. Moore, John A. Finch, Walter B. Moore, Arthur D. Jones, Orville D. Jones, W. H. Warner, Frank A. Moore, Nelson B. Nelson.

Record of proceedings had and evidence submitted before W. J. McGee, a special commissioner, appointed by the Secretary of the Interior.

Whereas the Commissioner of the General Land Office has ordered an investigation and hearing concerning the legality of coal-land entries Nos. 1 to 33, both inclusive, in the Juneau land district in the Territory of Alaska, Kayak recording district, made and claimed by the above-named parties, respectively, upon the written charges hereto attached and made a part hereof; and

Whereas William J. McGee, by the Secretary of the Interior detailed and appointed a commissioner for the purpose of securing and receiving the testimony available in and material to this inquiry, having announced his readiness to proceed herein, thereupon came the United States, by their attorneys James M. Sheridan and W. B. Pugh, and the several claimants of the above-mentioned coal-land entries, herein designated as defendant by their attorneys John P. Gray and E. C. Hughes, and advised the said commissioner that at a conference heretofore had and held between them they had mutually entered into certain stipulation which they desired might be now reduced to writing and preserved as a part of the record of this inquiry, and by them then and there signed, said stipulation thereupon being stated in words and figures as follows:

STIPULATIONS.

For the purpose of obviating the delay and consequent loss of time and increase of expense necessarily incident to strict compliance with certain rules governing the introduction of evidence and certain other rules regulating procedure before the tribunals of the Land Department, the parties to this inquiry, the United States of America, by their attorneys James M. Sheridan and W. B. Pugh, and the several defending entrymen and claimants of and under the coal-land entries, mentioned and described in the caption hereof, by their attorneys John P. Gray and E. C. Hughes, have mutually agreed and stipulated with and to one another as follows:

First. To the end and for the purpose of avoiding unnecessary duplication of labor and accumulation of expense, necessarily resulting from repeated production of the same evidence, it is proposed and agreed that all said entries shall be considered and treated as the subject of one consolidated inquiry, and that the evidence bearing on the validity of each and of all said entries shall be produced under this inquiry. Provided, however, and it is distinctly agreed and to be understood, that the validity of each single and separate entry shall be determined by the competent, relevant, and material evidence relating to or bearing upon that entry alone, it being intended that the validity of each entry shall be determined according as all of the evidence shall show it, by itself, to be legal or illegal, and without regard to evidence showing the validity or invalidity of the other involved entries or any of them.

Second. That the said defending entrymen, each one for himself, consent and agree that notice of the charges preferred against their several entries by a special agent of the General Land Office, as those charges have been finally formulated and expressed by the Commissioner of the General Land Office, may be served upon their attorneys John P. Gray and E. C. Hughes, and by them accepted in their behalf, and in behalf of each of them, they and each of them hereby waiving and dispensing with any and all other further original process, together with evidence of service and return thereof. The notice to be delivered to said attorneys shall be a copy of the said charges, in the form in which they have been officially communicated to the attorney for the United States. And it is further agreed and stipulated that any other process or notice which it may be necessary to serve upon said entrymen, or any of them, or which counsel for the Government may desire to address to them, may be served upon, or delivered to, their said attorneys, in like manner and with like effect as has been provided in respect of original process.

Third. That the production of testimony before the commissioner appointed by the Secretary of the Interior shall begin on the 18th day of November, 1909, on which day the witnesses will attend before said commissioner, in the contest room of the district land office, in the United States Government building, in the city of Seattle, Wash., and shall be continued from day to day until finally completed and ended, subject to such postponements and continuances as may be ordered by said commissioner, pursuant to stipulation of the parties, or on motion of one of them, accompanied by a sufficient showing of legal ground therefor. When the testimony of all witnesses produced by any party hereto at Seattle has been taken, then shall the sittings of the commissioner be adjourned to and resumed on a day certain thereafter, to be fixed and designated by stipulation, or order of the commissioner, at such other place as may be convenient for the attendance of other desired and important witnesses, and like adjournments may thereafter be had to other places, for like reason and in the same manner.

That the mode of taking of the testimony in this inquiry shall be governed by the rules of practice in cases before the United States district land office, the General Land Office, and the Department of the Interior, the decisions of the General Land Office, and the usual and ordinary rules of evidence.

Fourth. That for the purpose of expediting the presentation of the Government's evidence and to dispense with the formal introduction, identification, and incorporation into the record of certain documentary evidence, it is stipulated and agreed that the original records and papers pertaining to the initiation and progressive completion of the several involved entries, or certified copies thereof, need not be produced, and introduction and identification thereof is hereby expressly waived. Said records and papers shall be considered as offered and received in evidence in the same manner and to the same purpose and effect as though they had been regularly and formally presented and admitted, the papers and records covered by this provision being as follows:

1. Notice of location.
2. Application for patent.
3. Field notes.
4. Affidavit of citizenship.
5. Proof of character and improvements—Agent.
6. Proof of character and improvements—Witnesses.
7. Applicant's affidavit as to use and benefit.
8. Proof of posting on claim—Agent.
9. Proof of posting on claim—Witnesses.
10. Register's certificate of posting in land office.
11. Proof of publication.
12. Agreement of publisher.
13. Receiver's receipt.
14. Register's certificate of entry.

Fifth. It is further stipulated and agreed that the testimony shall be preserved in the form of shorthand notes by stenographers furnished by the General Land Office, and by them thereafter and as soon as possible, transcribed at length in typewritten form in the manner and according to the form provided and prescribed by rule 42 of the Rules Governing Practice and Procedure in and before the land department, and a copy thereof furnished to defendants' attorneys from time to time as transcribed, the signatures of the several witnesses being hereby waived and dispensed with.

Sixth. The entrymen or claimants, or any of them, together with their authorized attorneys, may attend and be present at all sittings of the commissioner, and will be permitted to cross-examine the witnesses introduced by the Government, and will also be permitted to introduce witnesses in their own behalf, with like privilege of cross-examination by the attorneys for the Government, all in the manner provided and required by the rules of practice governing procedure in ordinary cases of contests before registers and receivers in the United States district land offices. The purpose of this stipulation is to provide for and make possible an adjudication by the Commissioner of the General Land Office and, on appeal, by the Secretary of the Interior, in the same manner and to the same effect as though formal hearings had been ordered and held before the register and receiver in the United States district land office at Juneau, Alaska, and appeals duly prosecuted from their decisions, or said decisions regularly considered by way of review, pursuant to rule of practice 48, it being understood that this inquiry is being conducted in accordance with and pursuant to the intent of section 183 of the United

States Revised Statutes, and that the oaths administered to witnesses by the commissioner sitting herein will be so administered pursuant to the authority conferred upon him by that statute.

Seventh. In the event it becomes necessary to take the deposition or depositions of any witness or witnesses relative to the issues involved in this hearing, the interrogatories and cross-interrogatories to be answered by such witness or witnesses may be filed with the Commissioner of the General Land Office instead of with the register and receiver of the local land office at Juneau, and the necessary commissions to take such depositions may be issued by the Commissioner of the General Land Office, and the depositions, when taken, shall be returned to that office.

Eighth. That the said defendants hereby expressly release and waive any right they may have to hearing and judgment in the first instance by the register and receiver at Juneau, Alaska, and hereby consent that all evidence submitted to the said commissioner shall be by him duly and regularly reduced to writing, properly preserved, and in due course submitted or delivered to and filed in the General Land Office in Washington, D. C., and a copy thereof furnished to defendants' attorneys, and upon said evidence and such depositions as may be taken herein, as well as upon such argument, written or oral, as the parties hereto may desire to submit, the said inquiry shall be considered and determined by the Commissioner of the General Land Office with the same force and effect as if regularly brought before him upon appeal from the decision of the register and receiver of the United States land office at Juneau, Alaska, and the defendants herein, by their said attorneys, shall have due and formal notice of the judgement rendered thereon by the said commissioner, and they or any of them may, in regular course of procedure, prosecute their appeal from such judgment to the Secretary of the Interior.

In testimony whereof, we have hereunto set our hands this 12th day of November, 1909, at Seattle, Wash.

THE UNITED STATES OF AMERICA,
By JAMES M. SHERIDAN.
W. B. PUGH.
CLARENCE CUNNINGHAM ET AL.,
By JOHN P. GRAY.
E. C. HUGHES.

Said stipulations having been examined by the Commissioner and the form and contents thereof by him duly considered, the same were and are by him approved and made a part of the record, as requested by the parties.

IN THE DEPARTMENT OF THE INTERIOR.

BEFORE THE GENERAL LAND OFFICE.

In the matter of the inquiry concerning the legality of coal-land entries Nos. 1 to 33, both inclusive, being, respective, coal-land surveys Nos. 50, 58, 71, 62, 41, 44, 51, 53, 54, 59, 42, 46, 49, 48, 47, 56, 61, 40, 68, 55, 64, 38, 43, 45, 52, 60, 67, 69, 70, 57, 66, 39, and 37, in the Juneau land district in the Territory of Alaska,

Kayak recording district, made and claimed, respectively, by Andrew L. Scofield, Francis Jenkins, Charles J. Smith, Horace C. Henry, Ignatius Mullen, Henry White, Henry W. Collins, Fred C. Davidson, Michael Doneen, Frank F. Johnson, John G. Cunningham, Clarence Cunningham, A. B. Campbell, Henry Wick, Hugh B. Wick, Fred H. Mason, William E. Miller, Charles Sweeney, Byron C. Riblet, Fred Cushing Moore, Alfred Page, W. W. Baker, Frederick Burbidge, Reginald K. Neill, Joseph H. Neill, Miles C. Moore, John A. Finch, Walter B. Moore, Arthur D. Jones, Orville D. Jones, W. H. Warner, Frank A. Moore, Nelson B. Nelson.

Notice of charges on the basis of which inquiry is to be conducted.

The defendants severally named in the caption hereof are each and every one of them hereby notified that on Thursday, the 18th day of November, 1909, at the hour of 10 o'clock a. m. on said day, in the contest room of the United States district land office in the United States government building in the city of Seattle, Wash., an inquiry will be inaugurated by and before William J. McGee, a detailed clerk and special commissioner designated and appointed by the Secretary of the Interior for that purpose, in, of, and concerning the validity of the several coal-land entries mentioned and described in the caption hereof, and that said inquiry will be conducted upon the basis of charges formulated by the Commissioner of the General Land Office and stated as follows, to wit:

First. That said entrymen did not make their said respective locations, filings, and entries for their own exclusive, individual use and benefit; but that they, and each and every one of them, prior to making said locations, filings, and entries on and for said lands, entered into an agreement or understanding, each of them with each and every other one of them, whereby it was agreed and understood that after obtaining patent for said lands, they, the said locators and entrymen, and each and every one of them, were to consolidate, combine, and hold the lands embraced in their said locations, filings, and entries for their joint use and benefit, which said agreements and understanding was carried out in the making of said locations, filings, and entries, and continued up to and including date of said entries.

Second. Said entrymen did not locate, file upon, and make entry of the lands embraced in and covered by their said several entries, in good faith, with intent that the legal title to the lands covered by each of said several entries should be acquired, pursuant to the laws of the United States, governing the entry, sale, and disposition of public lands valuable for the coal deposited and contained therein, for the separate and several use and benefit of the individual entrymen, but each of said locations, filings, and entries was made pursuant to the unlawful purpose and intent that the title acquired thereby and thereunder might and should inure to the use and benefit, in equal measure, of the entrymen and of each and every one of the several other persons by whom said coal entries Nos. 1 to 33 were made, or to the use, benefit, and advantage of an association, or corporation, by them formed, and entered into, or contemplated, and

of which they were to be members or stockholders by themselves, or in association with such other persons as they might admit, or who might secure entrance therein.

Third. That the locators and entrymen of the several tracts and parcels of land covered by and embraced and comprehended within the said coal entries Nos. 1 to 33, inclusive, did not, they, or any of them, prior to making such location, or at any other time thereafter and prior to filing notices of said locations and making entry thereon, open or improve any mine or mines of coal in and upon said tracts of land, or any one or more of said tracts, as was required by the act of Congress of April 28, 1904 (33 Stat., 525), by authority of which said entries were made.

The foregoing notice is communicated to you in accordance with instructions contained in a letter received from the Commissioner of the General Land Office, bearing date September 17, 1909 (File P38231), to the end that you may, if you so desire, attend and be present at the sittings of said commissioner, and there take such action and pursue such course as may be authorized by the instructions pursuant to which said commissioner is acting, and in accordance with stipulations entered into between the undersigned, as counsel for the United States and Messrs. John P. Gray and E. C. Hughes, counsel representing you, including herein putting in of a sufficient denial of said charges and the presentation of evidence in support of such denial and in refutation of said charges.

Very respectfully,

THE UNITED STATES OF AMERICA,
By JAMES M. SHERIDAN,
W. B. PUGH,
Attorneys.

Service of the above notice is hereby acknowledged on behalf of all of the several defending entrymen and claimants this the 12th day of November, 1909.

JOHN P. GRAY,
E. C. HUGHES,
Attorneys for Defendants.

IN THE DEPARTMENT OF THE INTERIOR, BEFORE THE GENERAL LAND
OFFICE.

In the matter of the inquiry concerning the validity or invalidity of coal-land entries Nos. 1 to 33, both inclusive, in the Juneau land district of Alaska.

Notice to produce documents desired for use as evidence.

Messrs. JOHN P. GRAY and E. C. HUGHES,
Attorneys for Claimants.

GENTLEMEN: This is to notify you, in your capacity as attorneys for each and every one of the 33 persons who made, or claimed under, coal-land entries Nos. 1 to 33, embracing lands in the Juneau land district, in the Territory of Alaska, that, on the 18th day of November, 1909, before William J. McGee, a detailed clerk of the General

Land Office, designated by the Secretary of the Interior a commissioner for the purpose of receiving the testimony produced on this inquiry, at the place and time indicated by the notice previously served herein, you will be called upon and required to produce and submit for inspection the several papers and documents hereinafter mentioned and described, it being the purpose of the undersigned then and there to offer and, if permitted, to submit the said documents, or certified copies thereof, as competent, relevant, and material evidence bearing on the subject of said inquiry.

The said several papers and documents are thus enumerated and described:

First. The original report submitted by H. L. Hawkins, civil and mining engineer, concerning the results of an examination made by him of the lands embraced in the coal-land entries above mentioned, in respect of their character and value as coal lands, and concerning the character and estimated cost of work and structures necessary to the efficient development and operation of productive mines of coal in and on said lands, said report having been submitted some time in the month of July, in the year 1905, or near that time.

Second. The original memorandum, or a preserved copy thereof, showing representations made and proposal submitted to Daniel Guggenheim, of New York, on July 20, 1907, by A. B. Campbell, Clarence Cunningham, and M. C. Moore, a committee representing themselves and the other persons who with them made the involved coal-land entries above mentioned, said representations and proposal having been made and framed in contemplation of the formation by the said Guggenheim and the said several entrymen of a corporation, by which the title to the lands in said coal-land entries might and should be acquired, and the capital stock of which should be owned and held by the said Guggenheim and the said several entrymen, and such other persons as might become the owners and holders thereof by purchase from said corporation, in the manner and form in said memorandum proposed and provided.

Third. The original minutes of a meeting held in the city of Spokane, in the State of Washington, in the month of June or July, in the year 1907, or near or about that time, which said meeting was attended by 25 of the 33 persons by whom coal-land entries Nos. 1 to 33 were made, and at which was adopted the resolution designating the committee referred to in the last preceding specification, by which said resolution said committee were authorized to make and submit the representations and proposal in said specification mentioned and described.

Fourth. An original copy of the statement submitted by Clarence Cunningham, under date of October 20, 1905, to each and all of the several persons who with him made, or claimed under, coal entries Nos. 1 to 33, above mentioned, reciting the facts relative to the employment of H. L. Hawkins, civil and mining engineer, for the purpose of securing an expert examination of the coal lands covered by said entries, and concerning the results of the examination so made and relating to other matters therein referred to.

Fifth. An original copy of the statement submitted by Clarence Cunningham to the several entrymen whom he represented, bearing date of February 29, 1904, and showing the conditions then existing in respect of the coal properties in Alaska represented by their col-

lective entries, as well as the amount of money received from them and expended in their behalf for the acquisition and development of said properties.

Sixth. A statement similar to the one mentioned in the last preceding specification, submitted by Clarence Cunningham to the several entrymen on or about March 1, 1907, and showing the condition of accounts and development work on that date.

Seventh. The original journal, or memorandum book, kept by Clarence Cunningham, recording cash transactions between himself and the several entrymen represented by him, as well as the purpose and character of said transactions, being the same journal or memorandum book which was once on file in the General Land Office at Washington, D. C., as an exhibit and a part of record in and concerning the investigation of the coal-land entries here involved, then and now in progress, and which said document was subsequently returned to the said Cunningham pursuant to his request for such return.

Witness our hand hereunto subscribed this 12th day of November, 1909.

THE UNITED STATES OF AMERICA,
By JAMES M. SHERIDAN,
W. B. PUGH,

Attorneys.

Service of above notice, by delivery of a copy thereof, is acknowledged, this the 12th day of November, 1909.

JOHN P. GRAY,
E. C. HUGHES.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., September 18, 1909.

MR. WILLIAM J. MCGEE,
*Chief Law Examiner, Section of Government Contests,
General Land Office.*

SIR: Proceedings have heretofore been instituted against coal entries numbers 1 to 35, inclusive, embracing and covering lands in the Juneau land district, in Alaska, and made by Andrew L. Scofield and others, on charges preferred by a special agent of the General Land Office, in form and substance as follows:

1. That said entrymen did not make their said respective locations, filings, and entries for their own exclusive, individual use and benefit; but that they, and each and every one of them, prior to making said locations, filings, and entries, on and for said lands, entered into an agreement or understanding, each of them with each and every other one of them, whereby it was agreed and understood that after obtaining patents for said lands, they, the said locators and entrymen, and each and every one of them, were to consolidate, combine, and hold the lands embraced in their said locations, filings, and entries, for their joint use and benefit, which said agreements and understanding was carried out in the making of said location, filings, and entries, and continued up to and including date of said entries.

2. That the lands embraced in entries number thirty. two and three, more particularly described as surveys number fifty-seven, fifty-eight, and seventy-one, and the lands in the south half of entries number twenty-four, nine, and twenty-eight, more particularly described as surveys number forty-five, fifty-four, and sixty-nine, do not contain coal in valuable or workable quantities and quantities.

3. Said entrymen did not locate, file upon, and make entry of the lands embraced in and covered by their said several entries, in good faith, with intent that the legal title to the lands covered by each of said entries should be acquired, pursuant to the laws of the United States governing the entry, sale, and disposition of public lands valuable for the coal deposited and contained therein, for the separate and several use and benefit of the individual entryman, but each of said locations, filings, and entries was made pursuant to the unlawful purpose and intent that the title acquired thereby and thereunder might and should inure to the use and benefit, in equal measure, of the entryman and of each and every one of the several other persons by whom said coal entries numbers 1 to 35 were made, or to the use, benefit, and advantage of an association, or corporation, by them formed, and entered into, or contemplated, and of which they were to be members, or stockholders, by themselves, or in association with such other persons as they might admit, or who might secure entrance therein.

4. That the locators and entrymen of the several tracts and parcels of land covered by and embraced and comprehended within the said coal entries numbers one to thirty-three, inclusive, did not, they, or any of them, prior to making such locations, or at any other time thereafter and prior to filing notices of said locations and making entry thereon, open or improve any mine or mines of coal in and upon said tracts of land, or any one or more of said tracts as was required by the act of Congress of April 28, 1904 (33 Stats., 525), by authority of which said entries were made.

Under date of August 26, 1909, there was filed in the General Land Office a paper signed by John P. Gray, attorney for the claimants of said coal entries, containing an agreement and stipulations in words and figures as follows:

IN THE DEPARTMENT OF THE INTERIOR.

In the matter of Coal Entries Nos. 1 to 35, inclusive, C. D. S., embracing 33 coal entries in the Juneau, Alaska, land district.

STIPULATION.

Whereas charges preferred against the above mentioned coal entries by a special agent of the General Land Office,

And whereas the General Land Office is prepared to formulate and serve charges, and to proceed with a hearing thereon,

And whereas for the purpose of expediting the matters of the said hearings and the saving of time and expense, and for the convenience of witnesses it has been deemed expedient by the General Land Office to suggest that the said cases be consolidated for hearing,

Now, therefore, on behalf of the said entrymen, it is stipulated as follows:

1. That the said charges shall be formulated and service thereof shall be accepted from the General Land Office direct, the said service to be made upon John P. Gray, attorney at law, residing at Wallace, Idaho.

2. That the said charges shall be so framed as to advise the said entrymen and each of them of the specific charges made against the allowance of patent upon his said entry and advising them of the charges which they will be required to meet.

3. That the testimony in the said cases shall be taken before a commissioner to be appointed by the General Land Office, the testimony to be taken at the various places where the different witnesses reside, or at such places as may be agreed upon by the attorneys and commissioner, the taking thereof to be under the general supervision of the said commissioner as to time and place of hearing.

4. That when all of the evidence is in, the record shall be forwarded to the General Land Office for decision in the first instance, the said entrymen and each of them hereby waiving action in the above cases by the Juneau, Alaska, land office.

5. That the said hearing shall commence within sixty (60) days from the date of this stipulation, and continue without unreasonable delays until all of the testimony is taken.

6. That all of the said cases may be consolidated for the purpose of the taking of testimony, each individual entry to be passed upon and each case to be adjudicated upon the evidence, material, relevant, and competent, introduced concerning the same, and without reference to or dependence upon or prejudice by reason of the action taken or decision reached upon any other of the above entries. It being understood that the consolidation of the cases involving the above entries for hearing is for the purpose of convenience and economy only.

Dated Aug. 26, 1909.

(Signed) JOHN P. GRAY,
Attorney for entrymen, Wallace, Idaho.

Said agreement and stipulations having been submitted to and accepted and approved by the Commissioner of the General Land Office, he has recommended to me that you be designated as a commissioner, with power and authority to sit for the purpose of hearing and receiving the testimony and other evidence which may be offered and submitted for use on the final hearing of said proceedings, all in accordance with and pursuant to the terms and provisions of said stipulation.

This is to advise you, therefore, that in accordance with said recommendation and in evidence of my confidence in your fidelity, ability, and integrity, I do hereby appoint you to be a commissioner for the purpose and with the power and authority aforesaid.

You are directed to proceed, with such dispatch as may be necessary, to the city of Seattle, in the State of Washington, and thereafter to such other place or places, as may have been or may be, by notice duly served, or by stipulation of the parties or their representatives indicated as the place or places where testimony is to be submitted, where, at the time and place appointed for the attendance of witnesses and the reception of their testimony, you will enter on the discharge of your duty in the execution of this commission, having first taken and subscribed to an oath of office which will be administered to you by the chief clerk of the General Land Office, by whom you will be supplied with a copy of the oath so administered and subscribed to and by you. Performance of your duty having been thus initiated, you will continue in the discharge thereof until it has been fully performed and terminated.

You will have and exercise all such powers and authority as are usually and ordinarily possessed and exercised by commissioners sitting for the purpose of receiving testimony, including the power to order a continuance or postponement of your sitting to a future day certain, either pursuant to motion and grounds therefor submitted by the representative of one of the parties, or pursuant to a stipulation entered into by them. The testimony received by you will be reduced to writing and preserved in the form of depositions, in accordance with the practice observed in cases of hearings before registers and receivers, and in all respects the proceedings before you will be governed and controlled by the rules of practice, whenever and in so far as they may be applicable.

Your compensation during the period of such service as you may render under this appointment will be the salary which you have heretofore received and are now receiving as chief law examiner in the section of Government contests, of the General Land Office, and, in addition thereto and in lieu of subsistence, you will be paid the sum of three dollars (\$3.00) for each and every day of that period, including the time occupied and consumed in going to and returning

from the place or places, at and in which such service is to be rendered, together with the cost of all necessary transportation to and from said places, as aforesaid, said allowance in lieu of subsistence and the cost of said transportation to be paid out of the moneys appropriated by Congress and now available "for the protection of the public lands and timber."

Very respectfully,

(Signed)

FRANK PIERCE,
First Assistant Secretary.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., November 3, 1909.

Mr. WILLIAM J. MCGEE,

*Detailed law examiner and commissioner to take testimony
in the investigation of fraud against the Government.*

SIR: You will in your capacity as detailed officer of this department to investigate alleged fraud against the Government of the United States and pursuant to the instructions contained in the letter to you of September 18, 1909, enter upon a full investigation of the charges preferred against the entries described in the aforesaid letter of September 18, 1909, and you must in accordance with the authority conferred by section 183 of the Revised Statutes administer an oath to any witness attending to testify or depose in the course of such investigation. To avoid unnecessary expense, and in order that all the facts may be ascertained, you will allow the defendants or any of them, or their duly authorized attorneys, to be present at the taking of such testimony and will permit them to cross-examine the witnesses produced by the Government and introduce testimony in their own behalf as in the manner provided for trials or hearings before registers and receivers. Duplicate or manifold copies of the testimony will be taken and the defendants or their attorneys furnished with copy thereof upon their paying a reasonable cost for the transcription thereof. The object of permitting these defendants to be present at the investigations to be conducted by you and to introduce testimony in their behalf is that by stipulation of the parties, the testimony so taken may ultimately be considered by the land department in determining and in disposing of the several cases upon their merits.

Very respectfully,

(Signed)

FRED DENNETT,
Commissioner.

Approved Nov. 3, 1909.

(Signed)

FRANK PIERCE,
First Assistant Secretary.

The COMMISSIONER. Without objection, the stipulations and accompanying papers, presented by Mr. Sheridan, will be made a part of the record by the stenographer.

The COMMISSIONER. Now, before proceeding with the taking of testimony, I wish to announce, for the information of the respective counsel in the case, that after this investigation commences every

statement made by any of the attorneys or witnesses will be made a part of the record. This must be understood to apply not only to the testimony of witnesses and objections by counsel, but also to any colloquy that may occur between counsel. The rules of practice of the Interior Department, which govern the taking of testimony in this proceeding, as you are all aware, provide that no testimony will be excluded from the record on the ground of any objection thereto, but when objection is made to any testimony offered, the objections will be noted, and the testimony with the exceptions will come up for the consideration of the Commissioner of the General Land Office. My power in this respect, therefore, is limited, as I have only authority to merely put a stop to obviously irrelevant questioning.

It will therefore be observed that this is not the time for any lengthy oral argument, and counsel will bear in mind that the proper place for any argument is before the Commissioner of the General Land Office. Objections should accordingly be brief and to the point.

Mr. SHERIDAN. I now hand to counsel for the claimants in this inquiry, 28 papers which the Government proposes to introduce as exhibits of this investigation, and I desire that they inspect them with a view to admitting them without the usual formalities as to the proof of the paper—and its authenticity.

Mr. HUGHES. In view of the stipulation in this case that we shall be supplied with copies of all testimony, may I ask counsel whether copies of these 28 documents have been made, so that we might have them for our use in the course of this proceeding?

Mr. SHERIDAN. Copies have not been made, but we will have them made as soon as possible and furnished to you for that purpose. In the meantime, of course, these will be accessible to you for consultation during all of the hours of the sessions. We will prepare those copies for you as rapidly as we possibly can.

Mr. HUGHES. These papers are so exceedingly voluminous that it will take some time to examine them. I would suggest that we can probably expedite the matter if there is some room where we can sit down and examine them so that we may go through them as rapidly as possible.

Mr. SHERIDAN. I shall endeavor to get that accommodation for you, Mr. Hughes, from the custodian.

Mr. HUGHES. May we be excused from the court room until we can go through these papers? I see they are very voluminous.

The COMMISSIONER. Yes, sir. How long do you think it will take—an hour?

Mr. HUGHES. Yes, it will take at least an hour to go over these papers.

The COMMISSIONER. Yes; in the meantime we will take a recess to give you the time to examine the papers.

Mr. SHERIDAN. No objection by the representatives for the Government.

Mr. HUGHES. We will return as soon as we have completed the examination.

The COMMISSIONER. Very well, sir.

Recess taken.

Mr. SHERIDAN. We are ready to proceed.

Mr. GRAY. Mr. Hughes and myself, in addition to appearing for the different entrymen, appear also for Fred B. Snyder, assignee of Andrew L. Schofield, for Horace F. Winchell, assignee for B. C. Riblet and Nelson B. Nelson; for R. M. Bennett, the assignee of Frederick Burbidge; for R. Peterson, assignee of Reginald K. Neill; and for Fred B. Snyder, assignee of Joseph H. Neill; and we also want the record to show at this time, and it is agreed between counsel for the Government and ourselves that the parties so named may appear here as party defendants in this hearing, they having succeeded to the interests of the original entrymen by purchase.

TESTIMONY PRODUCED BY THE GOVERNMENT.

Mr. SHERIDAN. I now offer in evidence, as Government Exhibit No. 1, a letter from Clarence Cunningham, dated Spokane, Wash., February 18, 1907, addressed to H. K. Love, of Juneau, Alaska, which letter is accompanied by an affidavit entitled, "Affidavit of applicant, made by Clarence Cunningham the 2d day of January, 1907, and executed before Special Agent H. K. Love."

Mr. HUGHES. The defendants admit the authenticity of the signature of Clarence Cunningham, both to the letter and to the affidavit, was sworn to, but these defendants herein, other than the said Clarence Cunningham, object to the introduction of Government's Exhibit No. 1 in evidence, for the reason that the same is immaterial, and for the further reason that it is incompetent, and no foundation having been laid for its introduction as against these defendants.

The COMMISSIONER. The exhibit will be received in evidence and marked, "Government's Exhibit No. 1."

(Paper marked "Government Exhibit No. 1" admitted in evidence.)

Mr. HUGHES. Now, in order to save trouble in this matter, I will make the following statement and stipulation:

It is agreed that unless objections are made specifically on behalf of the separate defendants, they may be deemed made in behalf of all defendants and urged by any of them upon any hearing in this case. That will save encumbering the record with the specific objections, and the objections will be good as to all.

Mr. SHERIDAN. I now offer in evidence as Government's Exhibit No. 2, an affidavit of Clarence Cunningham dated March 6, 1908, executed before L. R. Glavis, chief of field division, General Land Office, and witnessed by Horace Tillard Jones; and also accompanying said affidavit, another affidavit of Clarence Cunningham dated April 28, 1908, and executed before Leroy V. Newcomb.

Mr. HUGHES. The defendants admit the authenticity of the signatures, both of affiant and of the notary public or other officer before whom the affidavit was made; but on behalf of all of the defendants, except Clarence Cunningham, object to the said Government Exhibit No. 2, and to every part thereof on the ground that the same is immaterial, and upon the further ground that it is incompetent and no foundation has been laid for its introduction or consideration as against any of them.

The COMMISSIONER. It may be received and marked "Government's Exhibit No. 2."

(Paper marked "Government's Exhibit No. 2" admitted in evidence.)

Mr. SHERIDAN. We will ask counsel for the claimants if they have with them the original journal of Clarence Cunningham, setting out a record kept by the said Clarence Cunningham, showing statement of agreement, payments made, expense account, etc., consisting of 57 pages, being a private journal of Mr. Cunningham, containing all of these items relating to the Alaska Coal Entries, known as the Cunningham group of coal entries, and which are now under investigation.

Mr. HUGHES. Well, we haven't the book referred to with us at this time.

Mr. SHERIDAN. Is it the intention of the counsel to produce that book later?

Mr. HUGHES. We can not as yet say what our intention will be at a later date. We will advise you later.

Mr. SHERIDAN. We call attention to the fact that we filed a notice to produce this document and other documents set out in said notice, which notice is now a part of the record of this investigation, and since the original has not been produced, we now offer in evidence this certified copy, containing a copy of the original report of the Chief of Field Division, L. R. Glavis, consisting of Mr. Glavis's letter of transmittal, dated April 20, 1908, a copy of the affidavit signed by Clarence Cunningham and witnessed by Horace Tillard Jones, and subscribed and sworn to before L. R. Glavis on March 6, 1906; the copy of an affidavit signed by Orville D. Jones and witnessed by Horace Tillard Jones, and subscribed and sworn to before L. R. Glavis at Wallace, Idaho, March 5, 1908; a copy of an affidavit of Frank F. Johnson witnessed by Horace Tillard Jones and subscribed and sworn to on March 5, 1908, at Wallace, Idaho, before L. R. Glavis; a copy of the affidavit of F. Cushing Moore, witnessed by L. R. Glavis and subscribed and sworn to at Wallace, Idaho, March 5, 1908, before Horace Tillard Jones; and a copy of the original record of Clarence Cunningham, the statement of the agreement, payments, and expense account, page 1 to 57, both included, in the matter of the Alaska coal entries known as the Cunningham group, all of which are certified to by the Commissioner of the General Land Office.

Mr. HUGHES. The defendants each object to the introduction in evidence of Government Exhibit No. 3, for the reason that it is irrelevant, incompetent, and immaterial, and for the further reason that it is incompetent and that no proper foundation has been laid therefor.

The COMMISSIONER. It will be received in evidence and marked "Government's Exhibit No. 3."

(Paper marked "Government's Exhibit No. 3," admitted in evidence.)

Mr. SHERIDAN. I now offer in evidence as Government's Exhibit No. 4 an affidavit by Clarence Cunningham, dated September 4, 1908, executed before E. E. Walker, a notary public in and for the State of Washington, residing at Seattle.

Mr. HUGHES. The defendants, each of them, object to Government's Exhibit No. 4 on the ground it is incompetent, irrelevant, and immaterial, and no proper foundation has been laid, and in addition thereto make the same objection as to that document.

Mr. SHERIDAN. I assume that the same admission is made with regard to the authenticity of Exhibit No. 4 as was made in regard to the others, Mr. Hughes?

Mr. HUGHES. Well, there are no original signatures attached to it; you should have the original.

Mr. SHERIDAN. The original is on file in the General Land Office, as I understand it.

Mr. HUGHES. We will withdraw that objection on the statement of counsel that it is a true copy of an original on file in the General Land Office in Washington, and in lieu of that objection we will make the following statement and objection:

We admit that Exhibit No. 4 is a true copy of the original on file in the General Land Office at Washington, D. C., and that the signatures thereto may be taken as the correct signatures of the affiant and of the official before whom the oath was made; and thereupon each of the defendants, except the said Clarence Cunningham, object to the admission in evidence of Government's Exhibit No. 4, upon the ground that it is immaterial, and upon the further ground that it is incompetent and that no foundation has been laid for its introduction in evidence as against them or either of them.

The COMMISSIONER. It will be received in evidence and marked Government's Exhibit No. 4.

(Paper marked "Government's Exhibit No. 4" admitted in evidence.)

Mr. SHERIDAN. We now offer in evidence as Government's Exhibit No. 5 a statement of accounts prepared by Clarence Cunningham; under date of February 29, 1904, one copy of which was by said Cunningham transmitted to each of the persons then claiming coal-land entries, 1 to 33, inclusive.

Mr. HUGHES. The defendants admit that the signature of Clarence Cunningham appearing on the first page of said government Exhibit No. 5 is his true signature; each of the defendants object to so much of the offer as is descriptive of the exhibit, and each of the defendants, except Cunningham, object to said Government Exhibit No. 5 being admitted in evidence, upon the ground that the same is immaterial and upon the further ground that it is incompetent and no proper foundation has been laid for its introduction in evidence against them or any of them.

The COMMISSIONER. The paper may take the same course as the others.

(Paper marked Government's Exhibit No. 5 admitted in evidence.)

Mr. SHERIDAN. We wish to state that we propose to prove later that one copy of this statement of account was sent to each entryman.

Mr. HUGHES. My only purpose in that, Mr. Sheridan, in that part of my objection, was to intimate that, in making an offer of an exhibit, no description of the exhibit should be given except which correctly sets forth the nature of the instrument; and when you come to make that additional proof we will object, and shall try to make the different objections as they appear.

Mr. SHERIDAN. Before introducing in evidence the next exhibit, which is Government's Exhibit No. 6, being a statement of account by Clarence Cunningham, dated Seattle, Wash., October 20, 1905, we shall ask counsel for the defendants if they have with them in court the original, as asked for in the notice, to produce?

Mr. HUGHES. Isn't this the one containing the original signature of Mr. Cunningham?

Mr. SHERIDAN. Yes.

Mr. HUGHES. I am not sure whether we have such a paper or not. If it is, it is because an original or copy of it was retained by Mr. Cunningham in his possession. We have no such copy turned over to use by any other defendant. I am willing to avoid the necessity of disturbing the order of your proof to admit that this is a true copy of an original signed by Mr. Cunningham, and that the purported signature here appearing may be considered with the same force and effect as though it were the signature of Mr. Cunningham, subject to our right, if upon further examination we find that admission is incorrect, to withdraw it.

Mr. SHERIDAN. We now offer in evidence this statement of account already described, dated Seattle, Wash., October 20, 1905, signed by Clarence Cunningham, and introduced in evidence as Government's Exhibit No. 6.

Mr. HUGHES. Each of the defendants, except Clarence Cunningham, object to the introduction in evidence of Government's Exhibit No. 6, upon the ground that it is immaterial and upon the further ground that it is incompetent and that no proper foundation has been laid for the introduction thereof against them or any of them, not, however, intending in this objection to raise any question that the signature to the instrument is not authentic.

The COMMISSIONER. It will be received in evidence and marked "Government's Exhibit No. 6."

(Paper marked "Government's Exhibit No. 6," admitted in evidence.)

Mr. SHERIDAN. We now offer in evidence as Exhibit No. 7, of the Government, a report of coal property in Kayak recording district, controlled by Clarence Cunningham, made by H. L. Hawkins, and bearing his original signature, which is a report accompanied by a map bearing the legend "Map of Cunningham coal claims, showing approximate strike of upper coal seams upon the 300-foot datum plane, or water level, and proposed tunnel for developing property, 1905."

Mr. HUGHES. The defendants object to the introduction of Government's Exhibit No. 7 upon the ground that it is incompetent, irrelevant, and immaterial, and yet not intending to raise any question as to the authenticity of the signature of Mr. Hawkins.

The COMMISSIONER. It will be received, and marked as "Government's Exhibit No. 7," in evidence.

(Paper marked "Government's Exhibit No. 7," admitted in evidence.)

Mr. SHERIDAN. We now offer in evidence as Government's Exhibit No. 8, a statement of account of the Alaska coal fields, to March 1, 1907, made by Clarence Cunningham, as pertaining to the other statement of accounts concerning the same property.

Mr. HUGHES. The defendants, and each of them, except Clarence Cunningham, object to the introduction of Government Exhibit No. 8 upon the ground it is immaterial, and upon the further ground that it is incompetent, and no proper foundation has been laid for its introduction against them, or any of them.

The COMMISSIONER. It will be received in evidence and marked as "Government's Exhibit No. 8."

(Paper marked "Government's Exhibit No. 8," admitted in evidence.)

Mr. SHERIDAN. We now offer in evidence as Government's Exhibit No. 9, a statement of account of the Alaska coal fields, showing the sums paid by claim owners to January 1, 1908, and receipts and disbursements made on their account, this also being one of the statements made by Clarence Cunningham.

Mr. HUGHES. We make the same objection to that as was made to the last preceding exhibit.

The COMMISSIONER. It will be received in evidence and marked as "Government's Exhibit No. 9."

(Paper marked "Government's Exhibit No. 9," admitted in evidence.)

Mr. SHERIDAN. We now offer in evidence as Government's Exhibit No. 10, a memorandum setting forth representations and a proposal made and submitted to Daniel Guggenheim, of New York, on July 20, 1907, by A. B. Campbell, Clarence Cunningham, and Miles C. Moore, acting for and representing themselves and other parties associated with them, as in said memorandum is explained, said proposal looking to and contemplating the formation of a corporation by the said Guggenheim, and the persons by whom and whose behalf the said proposal was submitted.

Mr. HUGHES. We again object to the portion of the offer of counsel in which he attempts to draw conclusions as to the character of the exhibits offered rather than to a mere description for identification. The defendants each object to the introduction in evidence of Government's Exhibit No. 10, for the reason that it is irrelevant and immaterial, and for the further reason that it is incompetent and no proper foundation has been laid for its introduction. By this objection, it is not intended to urge that the exhibit offered is not a true copy of the original.

The COMMISSIONER. Yes. It will be received in evidence and marked as "Government's Exhibit No. 10."

(Paper marked "Government's Exhibit No. 10," admitted in evidence.)

Mr. SHERIDAN. We now wish to suggest an adjournment until tomorrow morning at 10 o'clock if it is agreeable to counsel for the defendant.

Mr. HUGHES. The defendant considers that you have been very courteous, and we have no grounds to refuse any reasonable request made.

The COMMISSIONER. Before we adjourn, why would it not be well to agree about the hours of our daily sessions and the hours between which we will sit?

Mr. SHERIDAN. It has been our idea that we hold sessions from 10 to 12 and from 2 to 4 daily, if that is satisfactory to counsel for claimants.

Mr. HUGHES. Yes. I would like to inquire if this goes on Saturday?

The COMMISSIONER. I presume so.

Mr. HUGHES. I may be engaged on Saturday, so that it will be exceedingly difficult for me to avoid taking it up. I have a matter of considerable importance which is set for Saturday, which I will endeavor to have continued, or to have it fixed for a definite hour,

so that we can put in at least a part of the day on Saturday in this hearing. I will see counsel and let the commissioner and counsel know some time to-morrow in regard to that. It is possible I would like to go on with this hearing at least in the forenoon.

Mr. SHERIDAN. That will be satisfactory.

The COMMISSIONER. Do I understand that this arrangement is to fix the hours of the hearings during the proceedings or simply for to-morrow?

Mr. SHERIDAN. It is my desire to have the same hours, from 10 to 12 and from 2 until 4.

Mr. HUGHES. It might be understood that these hours be observed as a rule, unless by agreement between counsel or with the consent of the commissioner it would be varied from under the circumstances which might arise.

The COMMISSIONER. Yes. In view of this understanding and agreement, we will convene to-morrow morning at 10 o'clock; and hereafter the investigation will be taken up at 10 o'clock in the morning; and do we have one or two hours at noon?

Mr. SHERIDAN. The hours are to be from 10 to 12 and from 2 to 4.

The COMMISSIONER. Yes. We will adjourn until to-morrow morning at 10 o'clock.

(And thereupon the further inquiry in this matter was adjourned to 10 o'clock a. m., November 19, 1909.)

NOVEMBER 19, 1909—10 A. M.

Appearances: Hon. William J. McGee, United States special commissioner; Mr. James M. Sheridan and Mr. William B. Pugh, counsel for the Government; Mr. E. C. Hughes and Mr. John P. Gray, counsel for claimants.

Mr. SHERIDAN. We are ready to proceed.

Mr. GRAY. We are also ready.

Mr. SHERIDAN. I desire to call the attention of the counsel for the claimants to page 4 of the stipulation, wherein the fourth stipulation entered into between counsel will be found and wherein the enumeration of the original papers is set out which, under the stipulation, are understood to be admitted in evidence. I wish to inquire in that connection if, due to the fact that the power of attorney from each and every one of the 32 entrymen is not specifically named, any question is to be raised on the validity or the propriety of its introduction under the stipulation since it is with the original papers.

Mr. HUGHES. If the commissioner please, it is our understanding that all papers filed in each of the several entries prior to the issuance of final receipt and certificate of patent, being the papers upon which the officers of the department base their action in receiving payment from the several entrymen and issuing certificate, receipt and certificates of patent are admissible, and it should be considered in evidence or formally introduced.

Mr. SHERIDAN. Whether it is specifically enumerated or not.

Mr. HUGHES. It being our understanding, and I take it, Mr. Sheridan, that the attempted enumeration here was simply an attempt to give a general enumeration of the class of papers involved in these proceedings.

Mr. SHERIDAN. That is our understanding.

Mr. HUGHES. We understand with counsel that all papers filed with the register and receiver and submitted to the department prior to the issuance of certificate of patent and final receipt are to be considered in evidence and should be presented here upon the record.

Mr. SHERIDAN. For the purpose of having it appear on the record, I wish to state that at the suggestion of counsel for claimants, and for the purpose of clarifying the record, we wish to introduce a copy of all of the original papers referred to by myself and Mr. Hughes which were received and filed in the office of the register and receiver at Juneau, Alaska, prior to the issuance of final certificate, the purpose of this being to give claimants a sample of all of the original papers as they will be found in each entry.

Mr. HUGHES. You mean a certified copy of all the papers in one entry?

Mr. SHERIDAN. Certainly.

Mr. HUGHES. Of one claim should be considered as a sample of all, but all the papers of each entry on file in Washington should be deemed a part of the record in this case for the purpose of this hearing before the commissioner.

Mr. SHERIDAN. Certainly, under the stipulation already entered into. We now offer in evidence Government Exhibit 11, being an affidavit of Orville D. Jones, dated March 5, 1908, and executed before L. R. Glavis at Wallace, Idaho, and witnessed by Horace Tillard Jones, which affidavit is corroborated on the same paper by Frank F. Johnson before the same parties, at the same place and on the same date, and also by F. Cushing Moore at the same place before the same parties and on the same date, and all of which parties are claimants.

Mr. HUGHES. I would like to ask counsel for our information respecting the exhibit offered this question:

I observe that certain copies, typewritten copies, follow what purport to be the original affidavits, and among them is included what purports to be a copy of the affidavit of Clarence Cunningham, not in anyway specially referred to in the original affidavits included in this exhibit. I want to know why they appear in this exhibit?

Mr. SHERIDAN. The affidavit to which Mr. Hughes has called our attention, namely, that of Clarence Cunningham, and a copy of which is attached to the last exhibit, is improperly connected with that exhibit, and will be removed promptly.

Mr. HUGHES. The remaining typewritten copies I take it, Mr. Sheridan, are true copies of the longhand affidavit executed in the original form, and which appear in this exhibit, and are there for convenience in reading.

Mr. SHERIDAN. Yes.

Mr. HUGHES. The defendants, not requiring any further proof for the authenticity of the signatures to the original affidavits offered, all the defendants, except those named as affiants in the exhibit, hereby object to the introduction of this exhibit upon the ground that each of the affidavits contained in the exhibit is immaterial and is incompetent and no foundation having been laid for the introduction thereof against the objecting defendants or any of them.

The COMMISSIONER. It may be received in evidence and marked as Government Exhibit No. 11.

(Papers marked Government Exhibit No. 11 admitted in evidence.)

Mr. SHERIDAN. We now offer in evidence as Government Exhibit 12 an affidavit of Henry White, one of the entrymen in this group, dated Wallace, Idaho, March 5, 1908, executed before Horace Tillard Jones.

Mr. HUGHES. Admitting the authenticity of the signatures on this exhibit, the defendants, other than the affiant named therein, object to its introduction in evidence for the reason it is immaterial; and for the further reason it is incompetent, and no foundation has been laid for its introduction, as against the defendants, or any of them.

The COMMISSIONER. It may be received in evidence and marked as Government Exhibit 12.

(Papers marked Government Exhibit 12 admitted in evidence.)

Mr. SHERIDAN. We now offer in evidence Government Exhibit 13, which is an affidavit of Horace M. Davenport, dated July 10, 1909, and executed before Fred W. Dean, a notary public in and for the county of Chehalis, State of Washington. In this affidavit mention is made of the fact that Mr. Davenport sold his interest to Mr. Sweeney, one of the entrymen in this group.

Mr. HUGHES. Without intending to raise any question as to the authenticity of the signature of Mr. Davenport, or of the failure of the notary public to properly subscribe to the affidavit, each of the defendants object to the introduction of this affidavit in evidence for the reason it is irrelevant and immaterial and it is incompetent, and no foundation has been laid for its introduction; and not being the best evidence; and for the further reason that the affiant was not an entryman of this land, never having made any entry under the law of 1904, under which the entries alone were admissible, and under which entries were made, and by location of these lands in pursuance of the provisions of the act.

The COMMISSIONER. It may be received in evidence and marked as Government Exhibit 13.

(Paper marked Government Exhibit 13 admitted in evidence.)

Mr. SHERIDAN. We now offer in evidence—

Mr. HUGHES (interrupting). We desire to make this further statement at this time in connection with the preceding exhibit and the others that we may desire to reserve the privilege of inspecting, to avoid delay in the introduction of the testimony; we are oftentimes interposing objections without sufficient time to make a critical examination of the instruments objected to, and we may desire, in some instances, not to press objections which were made at the hearing without having opportunity to critically examine the document. Objections are made on the grounds which might occur to us to be well taken at the time, but with the reservation that we may not wish to press them if, upon examination, we see fit to waive those objections, and this is made with reference to the statement—this statement is made with reference to the affidavit of Mr. Davenport; because from our hasty examination of it we are impressed with the view that in the main Mr. Davenport has correctly described the facts and conditions which existed during the period of his connection with the early transaction.

Mr. SHERIDAN. We now offer in evidence Government Exhibit No. 14, which is an affidavit of Charles Sweeney, one of the entrymen in these entries, dated April 30, 1908, and executed before

Sydney H. Schlöss, a notary public for New York County, State of New York.

Mr. HUGHES. Admitting the authenticity of the signatures to this exhibit, each of these defendants, except the affiant named therein—the affiant Sweeney named therein—object to the introduction thereof in evidence on the ground it is immaterial, and that it is incompetent, and that no foundation has been laid for its introduction as against any of the objecting defendants.

The COMMISSIONER. It may be received in evidence and marked Government Exhibit 14.

(The paper marked Government Exhibit 14 admitted in evidence.)

Mr. SHERIDAN. We now offer in evidence as Government Exhibit No. 15, an affidavit of Charles J. Smith, one of the entrymen in this group, made at Seattle, Wash., on the 10th day of April, 1908, and executed before L. R. Glavis.

Mr. HUGHES. Admitting the authenticity of the signatures, each of the defendants, except the affiant named in the affidavit, object to the introduction thereof in evidence on the ground that it is immaterial, and that it is incompetent, and no foundation has been laid for its introduction against any of the objecting defendants. Referring to the affiant, I mean Mr. Smith; I make that qualification because a copy of another affidavit purporting to be sworn to Mr. Cunningham is set forth in the exhibit.

Mr. SHERIDAN. That is there for the reason that it is referred to in Mr. Smith's affidavit.

Mr. HUGHES. My qualification is that it appears that Mr. Cunningham joined with the other defendants in this objection, all except Mr. Smith.

The COMMISSIONER. It may be received in evidence and marked as Government Exhibit 15.

(Paper marked Government Exhibit 15 admitted in evidence.)

Mr. SHERIDAN. I now offer in evidence Government Exhibit 16, an affidavit of Fred C. Davidson, one of the entrymen in this group, dated April 30, 1908, and executed before L. R. Glavis.

Mr. HUGHES. The same admission is made as to the authenticity of the signature, and the same objection made on behalf of all of the defendants except the affiant Davidson.

The COMMISSIONER. It may be received in evidence and marked as Government Exhibit 16.

(Paper marked Government Exhibit 16 admitted in evidence.)

Mr. SHERIDAN. We now offer in evidence Government Exhibit 17, which is an affidavit of Fred H. Mason, dated April 27, 1907, and executed before Walter G. Merryweather, a notary public within and for the State of Washington.

Mr. HUGHES. Admitting the authenticity of the signatures appearing upon this exhibit as being the correct signatures of the affiant and the notary public, the defendants, other than said Mason, object to the introduction thereof in evidence upon the ground that it is immaterial and incompetent, and no foundation has been laid for its introduction as against the defendants objecting, or any of them.

The COMMISSIONER. It may be received in evidence and marked as Government Exhibit 17.

(Paper marked Government Exhibit 17 admitted in evidence.)

Mr. SHERIDAN. We now offer in evidence Government Exhibit 18, which is an affidavit of Fred H. Mason, dated Spokane, Wash., August 5, 1907, and executed before Horace Tillard Jones, accompanying which and on the same paper is the corroborating affidavit of A. B. Campbell, dated Spokane, Wash., August 5, 1907, and executed before Horace Tillard Jones. Mr. Campbell and Mr. Mason are entrymen in this group.

Mr. HUGHES. We are not making any objection to the introduction of this exhibit in evidence for the reason that if our former objections to the other affidavits are to be regarded by the department, and these affidavits considered by them as competent evidence, we desire that this affidavit should be received and considered by the department, since it contains a clear and reasonably accurate statement of the facts as they existed, and by comparison discloses the evident effort of Mr. Glavis to employ language in the later affidavits which would convey a different meaning from that evidently intended by the affiant.

The COMMISSIONER. It may be received in evidence and marked as Government Exhibit 18.

(Paper marked Government Exhibit 18 admitted in evidence.)

Mr. SHERIDAN. We now offer in evidence Government Exhibit 19, which is an affidavit of W. H. Warner, one of the entrymen in this group, dated April 25, 1908, and executed before Obed C. Billman, a notary public of Cuyahoga County, Ohio.

Mr. HUGHES. Without intending to object to the exhibit on the ground of lack of authenticity of the signatures, the defendants, other than the affiant Warner, object to the introduction and admission of that exhibit in evidence upon the ground that it is immaterial, and upon the further ground that it is incompetent, and no foundation has been laid for its introduction as against any of the objecting defendants.

The COMMISSIONER. It may be received in evidence and marked as Government Exhibit 19.

(Paper marked Government Exhibit 19 admitted in evidence.)

Mr. SHERIDAN. We now offer in evidence Government Exhibit No. 20, an affidavit of William E. Miller, one of the entrymen in this group, dated May 9, 1908, and executed before Anthony Neibing, a notary public of Lorain County, Ohio.

Mr. HUGHES. Without objecting to the authentication of the signature to this affidavit, or of the notary, the defendants, other than the affiant, object to its introduction upon the ground stated in the last preceding objection.

The COMMISSIONER. It may be received in evidence and marked as Government Exhibit 20.

(Paper marked Government Exhibit 20 admitted in evidence.)

Mr. SHERIDAN. We now offer in evidence Government Exhibit 21, which is an affidavit of Hugh B. Wick, one of the entrymen in this group, dated May 11, 1908, and executed before A. E. Adams, a notary public for Lorain County, Ohio.

Mr. HUGHES. The defendants, other than the defendant Wick, object to the introduction of this exhibit in evidence upon the ground that it is immaterial, and upon the further ground that it is incompetent, and no foundation having been laid for its introduction

in this case; and this objection is particularly urged by all of the defendants, and particularly the defendants other than Wick.

The COMMISSIONER. It may be received in evidence and marked as Government Exhibit 21.

(Paper marked Government Exhibit 21 admitted in evidence.)

Mr. SHERIDAN. We now offer in evidence Government Exhibit 22, which is an affidavit of Horace C. Henry, dated April 21, 1908, and executed before Ralph G. Stacey, a notary public within and for the State of Washington.

Mr. HUGHES. The same objection.

The COMMISSIONER. It may be received in evidence and marked as Government Exhibit 22.

(Paper marked Government Exhibit 22 admitted in evidence.)

Mr. SHERIDAN. We now offer in evidence Government Exhibit 23, which is an affidavit of H. W. Collins, one of the entrymen in this group, dated April 21, 1908, and executed before J. B. Gilbert, a notary public within and for the State of Washington.

Mr. HUGHES. Same objection.

The COMMISSIONER. It may be received in evidence and marked as Government Exhibit 23.

(Paper marked Government Exhibit 23 admitted in evidence.)

Mr. SHERIDAN. We now offer in evidence Government Exhibit No. 24, which is an affidavit of Michael Doneen, one of the entrymen in this group, dated May 2, 1908, executed before Nulton E. Nuzum, a notary public within and for the State of Washington.

Mr. HUGHES. Same objection; and in order to avoid any dispute when an objection is made in this form, for the sake of brevity I wish to be understood as referring to the last specific objection immediately preceding, and heretofore preceding.

The COMMISSIONER. It may be received in evidence and marked as Government Exhibit 24.

(Paper marked Government Exhibit 24 admitted in evidence.)

Mr. SHERIDAN. We now offer in evidence, as Government Exhibit 25, an affidavit of Miles C. Moore, dated April 25, 1908, and executed before W. C. Gregory, a notary public within and for the State of Washington.

Mr. HUGHES. Same objection.

The COMMISSIONER. It may be received in evidence and marked as Government Exhibit 25.

(Paper marked Government Exhibit 25 admitted in evidence.)

Mr. SHERIDAN. We now offer in evidence Government Exhibit 26, which is an affidavit of Frederick Burbidge, dated April 23, 1908, and executed before John M. Gleason, a notary public within and for the State of Washington.

Mr. HUGHES. The same objection.

The COMMISSIONER. It may be received in evidence and marked as Government Exhibit 26.

(Paper marked Government Exhibit 26 admitted in evidence.)

Mr. SHERIDAN. We now offer in evidence Government Exhibit 27, which is an affidavit of Henry Wick, one of the entrymen in this group, dated April 24, 1908, and executed before J. W. Blackburn, a notary public in and for Mahoning County, Ohio.

Mr. HUGHES. Same objection.

The COMMISSIONER. It may be received in evidence and marked as Government Exhibit 27.

(Paper marked Government Exhibit 27 admitted in evidence.)

Mr. SHERIDAN. We now offer in evidence Government Exhibit 28, which is an affidavit of Arthur D. Jones, one of the entrymen in this group, dated April 23, 1908, and executed before E. C. Riesow, a notary public within and for the State of Washington.

Mr. HUGHES. The same objection.

The COMMISSIONER. It may be received in evidence and marked as Government Exhibit 28.

(Paper marked Government Exhibit 28 admitted in evidence.)

Mr. SHERIDAN. We now offer in evidence Government Exhibit 29, being a certified copy of the articles of incorporation of the Behring River Railroad Company, which was incorporated by five trustees therein named as Frederick Burbidge, Clarence Cunningham, Miles C. Moore, H. C. Henry, and C. J. Smith, these articles of incorporation bearing date June 11, 1906, and said incorporation having occurred under the laws of the State of Washington.

Mr. HUGHES. The defendants and each of them jointly and severally object to the introduction of this exhibit in evidence for the reason that it is wholly incompetent, irrelevant, and immaterial under the issues under consideration, or upon which this proceeding is based; that it relates to an entirely different transaction and involves nothing having any relation to the location of these claims under the statute, or the carrying forward of the locations to final patent; and for the further reason that it is incompetent; no proper foundation has been laid for its introduction.

Mr. SHERIDAN. Of course, in introducing this exhibit we wish it to be understood there as meaning that the parties named here as incorporators are five of the entrymen in this group.

The COMMISSIONER. It may be received in evidence and marked as Government Exhibit 29.

(Paper marked Government Exhibit 29 admitted in evidence.)

Mr. SHERIDAN. Your honor, we wish to state that we have a few other exhibits which we will not be prepared to introduce until about 2 o'clock this afternoon, and with the consent of counsel for claimants we wish to adjourn until that hour.

Mr. HUGHES. If you have introduced all the evidence that is convenient for you at this time, preserving the order which you wish to observe in the progress of the offering of your testimony, we certainly shall consent. May I ask if counsel will not endeavor to submit his proposed exhibits to us before the convening of the commissioner this afternoon in this case, the court in this proceeding, so we may not delay the hearing by taking the time for inspection of the exhibits after the opening of the proceedings?

Mr. SHERIDAN. We shall be glad to submit the few other exhibits we have to counsel for claimants in the interim between now and 2 o'clock.

The COMMISSIONER. This inquiry will be adjourned until 2 o'clock this afternoon.

Recess taken to 2 p. m.

NOVEMBER 19, 1909—2 P. M.

Appearances: Hon. William J. McGee, United States special commissioner; Mr. James M. Sheridan and Mr. William B. Pugh, counsel for the Government; Mr. E. C. Hughes and Mr. John P. Gray, counsel for the claimants.

Mr. SHERIDAN. Your honor, we are ready to proceed. We wish to call Special Agent Horace Tillard Jones as a witness.

HORACE TILLARD JONES, a witness produced by the Government, being first duly sworn by the commissioner, testified as follows:

Direct examination by Mr. SHERIDAN:

Q. State your name, residence, and occupation.—A. Horace Tillard Jones; Portland, Oreg.; special agent of the General Land Office.

Q. How long have you been a special agent of the General Land Office, Mr. Jones?—A. Since August, 1903.

Q. Where have you been performing your duties during that time, or since that time, to date?—A. Oregon, California, Idaho, Washington, and Alaska.

Q. Have you, during your service as special agent for the General Land Office of the United States, been called upon to assist in the investigation of what is known as the Cunningham group of coal entries in Alaska, which are now being considered in this inquiry?—A. I have.

Q. Mr. Jones, I now hand you a paper and ask you to state what it is, and whether it ever came into your possession during your service as special agent.

Mr. HUGHES. We are assuming now from counsel's information to us, just given privately, the statement that the paper contains a statement of account already introduced in evidence, and therefore does not call for any improper or particular answer from the witness as to the character of the instrument in his hands, that his answer to it may be correct, but we do not object upon the assumption that what I have said is true. In other words, a witness should not be called upon, therefore, to state what a thing is, as it speaks for itself, but if it has been introduced in evidence we do not object to counsel describing to the witness what the instrument is which has already been put in evidence and ask him further questions.

Mr. GRAY. Referring to it by the number on the exhibit.

Mr. SHERIDAN. In that case I shall agree to the statement of counsel.

Mr. HUGHES. I wish you would do so, referring to it by the number of the exhibit, so it can be identified in the record.

Mr. SHERIDAN. I herewith hand you Government Exhibit No. 6, already in evidence, being a statement of account, dated Seattle, Wash., October 20, 1905, showing receipts and disbursements and signed by Clarence Cunningham, and ask you to state if at any time during your investigations of the Cunningham entries this paper came into your possession.—A. Government Exhibit 6 is a certified copy of a paper given to Mr. Glavis and myself in Wallace, Idaho, in March, 1908, by Mr. F. F. Johnson, in the bank in which he is employed, and the copy was made by a young lady stenographer in Wallace.

Q. At the time that Mr. Johnson turned this statement over to you and to Mr. Glavis, did he make any statement concerning it?

Mr. GRAY. I object to that, on the ground—on behalf of all the defendants except F. F. Johnson—on the ground that it is incompetent and no foundation has been laid for the introduction of such testimony against the other defendants, and upon the further ground that it is immaterial.

Q. Read the question over again, Mr. Stenographer (question read).—A. I don't recollect any.

Q. We now direct your attention to Government Exhibit No. 10, being what was generally described as the option by the parties therein, offered to Daniel Guggenheim, of New York, bearing date July 20, 1907, and ask you to state if that paper ever came into your possession during this investigation.—A. The original of this paper was given to Mr. Glavis and myself by Mr. Johnson at Wallace, Idaho, and we had a certified copy made of the paper and returned the original to Mr. Johnson, and this is a certified copy.

Q. When you say certified copy you mean a copy certified to by whom?—A. By Mr. Glavis and myself.

Q. Was there any statement made by Mr. Johnson in connection with that paper at that time?

Mr. GRAY. Same objection as I made to the other question.

A. I don't remember any particular statement being made by Mr. Johnson with respect to any papers that were given to us, but he merely handed them over to further the investigation.

Q. I now hand you Government Exhibit No. 8, already in evidence, being a statement of account of the Alaska coal fields to March 1, 1907, and ask you to state whether during your investigation of these entries, that paper came into your possession.—A. The original of this paper came into the possession of Mr. Glavis and myself, in the same manner as the others, through Mr. F. F. Johnson, of Wallace, Idaho; a copy was made of the same, and we certified to it and returned the original to Mr. Johnson.

Q. I now hand you Government Exhibit No. 9, which is a statement of account of the Alaska coal fields, by Clarence Cunningham, and which is already in evidence, and ask you to state if during your investigation of these entries that paper came into your possession.—

A. The original of this paper was given to me by Mr. Orville D. Jones, in his store at Wallace, Idaho, in March, 1908, and I made a longhand copy of it, which was certified to by Mr. Glavis and myself. The original is still in Mr. Jones's possession, as far as I know.

Q. I turn over the witness for cross-examination.

Mr. GRAY. No cross-examination.

Mr. GRAY. Just a minute, Mr. Jones. You say, Mr. Jones, that Mr. Glavis was present with you on the occasions that you have referred to, when you received those papers from Mr. Johnson and Mr. Jones?

The WITNESS. Yes, sir.

Mr. GRAY. He was present with you when you saw both gentlemen and received the papers from them?

The WITNESS. Yes, sir.

Mr. GRAY. Where is Mr. Glavis now?

The WITNESS. Why, so far as I know, he is in Seattle somewhere.
Mr. GRAY. Has that been or have you seen him in court here during this present hearing?

The WITNESS. I saw him yesterday—yes.

Mr. GRAY. That is all.

(Witness excused.)

Mr. SHERIDAN. We now offer in evidence Government Exhibit No. 30, being Plate II from Bulletin No. 335 of the United States Geological Survey, and we wish to state in introducing this map, upon which is shown the area covered by the Cunningham group, that it is merely for the purpose of showing the general geographic and topographic conditions in the territory where these claims are located. It is not for any more definite purpose than to convey a general presentation of the field and just part of Alaska shown on the map. We also wish to state that this map is certified to by the Commissioner of the General Land Office. In connection with this map, we wish further to add that surveys Nos. 65 and 63, appearing in the area outlined as the Cunningham claims on the map, were not entered; and when they are taken from the total otherwise shown, there will remain 33 claims.

Mr. GRAY. The defendants and each of them object to the introduction of the exhibit upon the ground that it is immaterial, irrelevant, incompetent, that it is not the best evidence, and that it has no relation to or connection with any of the matters concerning which this investigation is being held; and that it is not a true and correct copy of Plate No. 2 attached to Bulletin No. 335; and that no proper foundation has been laid for the introduction of the exhibit, or any part thereof, as against any of the defendants.

In connection with that objection, if the exhibit is intended simply and solely as a pictorial illustration, the defendants have no objection to it, except that they do object to it or its use as evidence in the case against the defendants or any of them; or as evidence of the character of the territory covered by these claims, or the geology thereof or topography thereof.

Mr. SHERIDAN. We reiterate that the purpose of this exhibit is to show what is set forth on it in its map form, and also in addition thereto the area indicated as the Cunningham claims, merely for its descriptive use in connection with a review of this case at the time that the decision is being made.

(Paper marked Government Exhibit 30 admitted in evidence.)

Mr. SHERIDAN. We now offer in evidence Government Exhibit No. 31, being geological map and sections of the Controller Bay region, Alaska, by G. C. Martin and others of the United States Geological Survey; being otherwise described as Plate V of Bulletin No. 335 of the United States Geological Survey, which also is certified to by the General Land Office, and the purpose of which is, as stated, for Government Exhibit No. 30, except in so far as the legend on this exhibit otherwise indicates.

Mr. GRAY. We make the same objection to this exhibit as we made to the other, coupled with the same statement that I made in connection with that objection, namely, that we shall not object to its use to show the geology or topography of claims or the area covered by claims in dispute.

(Paper marked "Government Exhibit 31" admitted in evidence.)

Mr. SHERIDAN. We now offer in evidence Government Exhibit No. 32, which is Plate VIII of Bulletin No. 335 of the United States Geological Survey, prepared by G. C. Martin and another of the Survey, the legend of which reads: "Map of the Behring River Coal Field, showing distribution of the various kinds of coal and the locations of the coal sections and coal veins." The purpose of this map is the same as that stated with regard to Exhibits 30 and 31, save in so far as modified by the legend appearing on this exhibit.

Mr. GRAY. We object upon the same grounds as we objected to the introduction of Exhibit 30; and with the same statement.

(Paper marked "Government Exhibit 32" admitted in evidence.)

Mr. SHERIDAN. We now offer in evidence Government Exhibit No. 33, the legend of which reads: "Map showing location of the preliminary survey for the Behring River Railroad Company, Controller Bay region, Alaska," and the further legend appearing, of which is signed by C. J. Smith, as president of the Behring River Railroad Company, and Clarence Cunningham, as secretary—and also by Charles S. Hubbell as chief engineer—and certified to by John W. Dudley, register of the Juneau (Alaska) land office. This exhibit, furthermore, is certified to by the General Land Office as being a true copy of the original on file in the General Land Office of the United States in Washington, D. C.

Mr. GRAY. The defendants, and each of them, object to the introduction of this exhibit upon the ground that it is irrelevant, immaterial, incompetent; that no proper foundation has been made for the introduction of it as against any of the defendants, and that it is entirely foreign to the question under examination and investigation at this hearing.

(Paper marked "Government Exhibit 33" admitted in evidence.)

Mr. SHERIDAN. We now offer in evidence Government Exhibit No. 34, the legend of which reads: "Map showing line of definite location for the Behring River Railroad Company, Controller Bay region, Alaska," and the further legend, which is signed by H. C. Henry, as vice-president of the Behring River Railroad Company, and Clarence Cunningham, secretary; also by H. L. Hawkins, locating engineer, and executed before S. H. Kerr, notary public in and for the State of Washington, residing at Seattle, Wash. We wish to state, in connection with Exhibits 33 and 34, that they are introduced to accompany the articles of incorporation of the Behring River Railroad Company, which were offered in evidence to-day.

Mr. GRAY. We object to the introduction of this exhibit for the same reasons as to the introduction of Exhibit No. 33, and to the articles of incorporation, and other reasons.

(Paper marked "Government Exhibit 34" admitted in evidence.)

Mr. SHERIDAN. We now wish to call as a witness for the Government Mr. Andrew Kennedy.

ANDREW KENNEDY, a witness produced by the Government, being first duly sworn by the commissioner, testified as follows:

Direct examination by Mr. SHERIDAN:

Q. State your name, residence, and occupation.—A. Andrew Kennedy, Seattle, Wash.; my occupation is coal examiner and special agent for the General Land Office.

Mr. HUGHES. Suppose you try to speak a little bit louder, Mr. Kennedy.

The STENOGRAPHER. Want the answer read, Mr. Hughes?

Mr. HUGHES. Yes.

(Stenographer reads the previous answer.)

Q. How long have you been in the service of the General Land Office of the United States?—A. Nearly two years.

Q. In what capacities have you been employed during your service with the Government?—A. To go out and examine the grounds on different entries which are assigned to me, and make reports, and testify to the same when necessary.

Q. Has the work you have been engaged upon, Mr. Kennedy, been engineering work?—A. Yes, sir.

Q. What, briefly, are your qualifications for this work?—A. Why, the past twenty-five years' practical experience examining coal properties.

Q. In the United States?—A. Yes, sir.

Q. Please name some of the coal mining properties with which you have been connected in that capacity.—A. Why, I was assistant engineer for the—

Mr. HUGHES (interrupting). We wish to make this objection, that that question is cross-examination.

Mr. GRAY. Ask him what his qualifications are, and let him go on and state them.

Mr. SHERIDAN. I do not see any objection to the question, and I think we have the right—

Mr. HUGHES (interrupting). I have no objection except the one I have made, which is clearly well taken.

Mr. SHERIDAN. Well, answer the question, Mr. Kennedy.

The WITNESS. What is the question?

Mr. SHERIDAN. Read the question.

(Stenographer reads previous question.)

A. (continuing). Delaware and Hudson Company, who were shippers of perhaps 25,000 tons a month; and for eleven years I was consulting engineer for the German Coal Company, who was shipping about 2,000 tons a day. And I have owned and operated coal mines of my own. I have developed properties in Washington—the State of Washington—and examined several, and have examined lands for the Government in Oregon, Wyoming, Washington, and Alaska.

Q. Coal lands?—A. Coal lands.

Q. State whether or not you have, at any time, while in the Government service, been called upon to make an examination of the entries now under investigation.—A. I was; and during the latter part of July and the middle of August I made a personal examination of the lands in question.

Mr. HUGHES. You mean of the present year?

The WITNESS. Yes, sir; of 1909.

Q. Did you, as a result of that examination, prepare any maps showing the results of your investigations?—A. Why, from notes; and Special Agent Stoner prepared the map under my direction.

Q. Who is Special Agent Stoner?—A. He is a special agent of the General Land Office, and was with me on this trip.

Q. He was with you during the examination of this group?—A. Yes, sir; on that expedition.

Q. And he assisted you?—A. Assisted me in the greater part of the work.

(The original map, Exhibit 34, is placed on the table before the witness on the stand.)

Q. I now hand you the map, the legend of which reads: "Map of certain coal claims in the Kayak District, Alaska; Clarence Cunningham, agent. Compiled from the records of the land office at Juneau, Alaska, and maps of the Geological Survey, and from data obtained by field examinations made in August, 1909, by special agents of the General Land Office Andrew Kennedy and S. N. Stoner," compiled by S. N. Stoner under direction of Andrew Kennedy, September, 1909, and I ask you to state whether this be the map referred to which you prepared, based upon the examination you made of these entries?—A. It is.

Mr. GRAY. I object to the question for the reason that it appears by the legend of the map that it was prepared from some other maps and by others than Mr. Kennedy.

Q. Please state, Mr. Kennedy, whether during your examination of this group of entries you made field notes, setting out your observations upon the ground.—A. I did.

Q. Have you those notes with you?—A. Yes, sir.

Q. I observe from other and further legend appearing on the right-hand side of this map that it covers 33 entries. Am I correct in that?—A. Yes, sir.

Mr. GRAY. I object, as not the best evidence. Just a minute, Mr. Kennedy, till I get my objections in.

Q. I now direct your attention, Mr. Kennedy, to the Adrian claim of Fred H. Mason, otherwise described hereon as "No. 56." Does this No. 56 refer to the survey number?—A. Yes, sir.

Q. State what you found in the nature of improvements and developments on that entry.

Mr. GRAY. Just a minute. We object, upon the ground that until the map has been sufficiently identified, and the proper foundation laid, and the map has been introduced in evidence—that the evidence is incompetent and improper, no foundation having been laid for it.

Q. Before proceeding any further, Mr. Kennedy, I wish to offer this map in evidence, and to submit it for the inspection of counsel for the claimants.

Mr. GRAY. The defendants, and each of them, object to the introduction of this map in evidence, for the reason that it is immaterial and also that it is irrelevant, and that it is incompetent and improper, no foundation having been laid for the introduction of the map in evidence.

(Paper marked "Government Exhibit 35" admitted in evidence.)

Q. It will be understood, of course, that this is Government Exhibit No. 35. I now direct your attention, Mr. Kennedy, to the Adrian coal claim, survey No. 56, appearing on this map prepared under your direction, and ask you to state what you found in the way of improvements or developments on this entry during your examination of it.

Mr. GRAY. We object to that question—the defendants and each of them object to that question upon the ground that it is immaterial and irrelevant.—A. On survey known as 56, I found no coal croppings or improvements of any nature.

Q. I now direct your attention to the next adjoining claim on the southern tier of entries in this group, namely, the Adams claim, which is survey No. 55.

Mr. GRAY. The defendants object, upon the ground that it is immaterial, irrelevant, and incompetent, and that no foundation has been laid therefor.

Q. I ask you to state, Mr. Kennedy, what you found with regard to improvements or developments on the Adams claim.

Mr. GRAY. Wait just a minute. The defendant, Fred Cushing Moore, objects—the entryman of the Adams claim—objects to the question, upon the ground that it is immaterial and irrelevant, and that no proper foundation has been laid therefor; and we desire that the objection to the preceding question, as to the Adrian claim, made in behalf of that entryman be considered in this connection.

A. Well, I found down on the entry about a half a mile of trail and a small tunnel driven in about 30 feet; and there was about 2 feet of coal exposed, not fully exposing the walls—they may be more or less extended. And at another point on that entry I found a coal crop which had been excavated at one time—but it had slid out, and had every appearance of about 5 feet of coal.

Q. Please point out the stations at which these discoveries were made on the Adams claim.—A. The first one described is on station 14, and the second as 31.

Mr. HUGHES. Indicated on the map?—A. As these stations.

Q. Give approximately the location of station 14.

Mr. GRAY. I object, as not the best evidence.

Q. I mean by that the part of the entry where it is situated.—A. It is practically in the northwest corner.

Q. Where is the other station located on this entry?—A. Practically the center of the claim.

Q. Now, regarding these stations, take the first station, No. 14, and give approximately the elevation at which it occurs.—A. Approximately, 250 feet.

Q. Above sea level?—A. Yes.

Q. What is the elevations on the other stations on this entry?

Mr. HUGHES. Thirty-one, you mean?

Q. Yes.—A. They are approximately the same elevation. They are on the same creek.

Q. What is the greatest elevation on this entry?

Mr. GRAY. We object to that as entirely immaterial.

A. Approximately, 500 feet.

Q. You spoke of a tunnel at station No. 14. In what direction is this tunnel driven?—A. Well, it is approximately northeast.

Q. How far did you say it was driven in?—A. Thirty feet.

Q. About how large is this tunnel?—A. Oh, about 4½ on the bottom, and about 3½ on top, and about 5 feet high. It is a common prospecting tunnel.

Q. Not timbered?—A. It was timbered.

Q. But you call it a prospect tunnel?

Mr. GRAY. I object to the leading question, and I object to it further as being incompetent, irrelevant, and immaterial. The defendant, Moore, objects as a leading question, incompetent, irrelevant, and immaterial.

A. Yes; I call it a prospecting tunnel.

Q. How far approximately from the next entry in this group adjoining on the north is this tunnel located?

Mr. GRAY. Objected to as immaterial and not the best evidence, irrelevant to any issue here involved.

A. Approximately, 300 or 400 feet.

Q. Did you observe the dip of the coal at the point where this tunnel is open; and if so, in what direction does it dip?—A. It dips to the northwest. At this point it was not absolutely regular.

Mr. GRAY. I move to strike out the later part of that answer as not responsive—oh, we will withdraw that motion.

Q. I now invite your attention to station 31 of this same entry, where you stated there was a cut. I want you to state approximately the amount of the opening there.

Mr. HUGHES. Wait just a moment. If the court please, I want at this time to interpose a general objection to the testimony given and that is being offered by this witness, and all like testimony, upon this ground: The Government, by its own interpretation of the law, and of its rules, and upon the acts done by the entrymen in pursuance thereof, accepted the proofs and the cash payments of the entrymen, and as a compliance with the law, and issued their certificates and patent receipts to the entrymen; and it is not now charged that any misrepresentation or fraud was practiced by the entrymen in respect to the character of the land or the acts done in the way of indicating that it was coal land or in the way of opening mines, or improving the same upon the land, and that it is therefore incompetent for the Government now to undertake, without a return of the money, to cancel the entry for any such reason; and all evidence offered of this character, in pursuance of such a purpose, is incompetent, irrelevant, and immaterial to this inquiry. I would like to have it understood that objection shall be a general objection running to all like testimony so that it need not be repeated from time to time to each question.

Mr. SHERIDAN. We do not desire to make any response to this objection by counsel for the claimants at this time.

Mr. HUGHES. If the commissioner please, I have been informed by counsel for the Government that it will not be disputed that all of these entries are made upon coal lands; in other words, it will not be questioned that the lands are coal lands, and I ask counsel if I am correct, so that the record may be clear, because that will be involved in the objections that I make.

Mr. SHERIDAN. Yes; you are correct.

Mr. HUGHES. And it is upon that status the lands are coal lands, and under the whole locality as coal lands that I predicate this general objection upon the grounds set forth.

Mr. SHERIDAN. We will now, in answer to the general objection, refer counsel for the claimants to the charges preferred against these entrymen, which is an ample answer in my opinion.

Mr. HUGHES. I do not mean by the objection to make a discussion, but simply to make clear the basis of the objections we will urge when it is heard by the proper tribunal, and the objection will have been made timely and fully.

Mr. GRAY. And the general objection intended to be repeated as we take up each claim on behalf of all the claimants, we make it here separately now.

Mr. SHERIDAN. Yes. Read the question.

(Question read.)

A. At the time I was at that cut the bank had slid in, and I am unable to tell the exact extent of it. I should judge it had, from appearances only, that it went in perhaps 5 or 6 feet, was what we call an open cut for the purpose of showing what the vein was.

Q. What was the purpose of your examination of this entry, Mr. Kennedy?—A. To determine whether it was coal land.

Mr. GRAY. Just a minute. I think we will object to that as incompetent, and calling for a conclusion of the witness, and not within the issues, and also as immaterial. He can describe the claim, and what he found there; and what he saw; but beyond that I do not think it is proper.

Mr. SHERIDAN. I desire to emphasize the fact in this connection that it was not a casual occurrence that he entered upon this claim and saw its conditions, but he went there specifically for the purpose of this case. You may answer the question.

A. Well, when I first went on the ground I went to the property and attempted to secure the best guide I could obtain who was familiar with the land, and who knew it, and who could take me to these openings that had been made; and I secured the services of Mr. James McGrath, who is, I believe, the care taker of the lands for the claimants, and we endeavored to go all over the claims and see all the exposures made that we could find.

Q. I again ask your attention to what was the purpose, Mr. Kennedy, of this examination?—A. To ascertain whether—

Mr. HUGHES (interrupting): Same objection.

A. To ascertain whether it was coal lands, and the amount of the improvements that were on the property—on the claim.

Q. Were you sent to Alaska for that purpose?—A. Yes, sir.

Mr. GRAY. I object for the same reason.

Q. By whom?—A. My instructions came from Mr. Glavis, former chief of the field division of this district.

Mr. HUGHES. If the purpose of that last inquiry is to disprove the published public statements of Mr. Glavis, we will withdraw that objection.

Mr. SHERIDAN. We are not making this investigation for any inquiry into Mr. Glavis's conduct.

Mr. HUGHES. We understand that Mr. Glavis was denied the opportunity of making this, and upon that ground we will be willing to withdraw our objection.

Q. Were these improvements that you have indicated all the improvements that you saw on the Adams entry?—A. Yes, sir.

Q. When you refer to a trail on this entry, what do you mean by that?—A. Why, it was a made walk for the purpose of getting over the property, I presume.

Q. Where did it lead to?—A. It led from the camp to the work, to the prospecting that had been done.

Q. Did it lead off this entry?—A. Into another entry; yes.

Mr. GRAY. I object to that as immaterial.

Q. To what other entries did it lead to?—A. On to survey 51, of the Tenino claim.

Q. I now invite your attention to Albion claim, being survey No. 53, being the next claim in the southern tier of this group of entries,

and I will ask you to state what improvements or developments you found on that entry?—A. I found no improvements whatever on that entry.

Q. Did you find any trails or cuts in that entry?—A. No, sir.

Q. I now call your attention to the Ansonia entry, survey No. 54, which is the next adjoining entry on the southern tier of this group of claims, and I will ask you to state what improvements and developments you found on that entry.—A. I found no improvements or developments on that entry.

Q. Of any kind?—A. Of any kind.

Q. I now next invite your attention to the Avon entry, survey No. 57, and I will ask you to state what improvements and developments you found there on that claim.—A. I found what was known as the Clear Creek Cunningham camp; that is, a log house. I do not seem to have the dimensions of that, but perhaps about 24 by 60, I presume.

Q. Did you visit that house?—A. I did; also, on that claim, approximately in the northeast corner, it was pointed out to me where the proposed tunnel was.

Mr. GRAY. Oh, I object to that as hearsay, as incompetent, irrelevant, and immaterial.

Q. Who pointed it out to you?—A. Mr. Chezum and Mr. McGrath.

Q. Who is Mr. Chezum?

Mr. HUGHES. It is not claimed that he was an entryman.

Mr. SHERIDAN. No; I am just asking him who he is.

Mr. HUGHES. I certainly can not see any reason, except for the purpose of rendering more clear the incompetency of the testimony he is offering as hearsay.

Mr. SHERIDAN. Well, that remains to be decided subsequently by the General Land Office.

Q. Who is Mr. Chezum?—A. He is a man who is alleged to have had charge of the prospecting work for Mr. Cunningham on these adjoining properties and on these adjoining entries.

Q. You mean in this Cunningham group?

Mr. HUGHES. Wait a minute. I move that that answer be stricken out as purporting to be an answer based upon hearsay testimony.

A. Yes.

Q. Did you ever meet Mr. Chezum?—A. I did.

Q. Did you learn from him personally this information?—A. He walked right past—

Mr. GRAY. I object to that as hearsay and as incompetent.

Mr. SHERIDAN. Do you mean to say that what Mr. Chezum would say he did himself is hearsay?

Mr. GRAY. The testimony the witness is giving is certainly hearsay and incompetent.

Mr. SHERIDAN. Read the question.

(Question read.)

A. He walked right past the point with me and pointed it out.

Q. Did Mr. Chezum make any statement to you himself personally about his having prospected this group?—A. He did.

Mr. GRAY. I make the same objection to that, and let it go to the entire line of testimony that this witness gives.

Q. Now, with reference to this proposed tunnel, was there anything on the northeast corner of the Avon entry, concerning which

we are now speaking, to indicate that a tunnel was to be driven there?—A. There had been no work done.

Q. Then you rely for what you say concerning that proposed tunnel upon what Mr. Chezum told you?—A. Yes, sir.

Mr. GRAY. Now, we move to strike out that testimony as incompetent and hearsay.

Q. Other than that, as I understand you, there was no improvements or developments on that area?—A. No, sir.

Mr. HUGHES. Now, if the commissioner please, in order that there may be no confusion in the record and that we may avoid unnecessary repetition, I would like to ask counsel if they will consent that the objections interposed in the case of the Avon and the Adams and the other claims shall be deemed to have been interposed upon behalf of the particular entries as the testimony is offered in respect to any specific claim, so we may not be required to continually and constantly renew our objections each time, it being understood that the testimony as to the improvements, etc., upon each of the claims, the testimony being offered by this witness, as to what he did upon these claims and discovered there?

Mr. SHERIDAN. As I understand you, you mean the general objections to this testimony?

Mr. HUGHES. I mean the objection that has been urged specifically as to the Adams and Avon, at least, on behalf of the entrymen in each case, and the general objection as to the right of the Government to contest or challenge the legality of these claims at this time upon the ground may be deemed to be renewed as to each one of the entrymen as you proceed with your examination of the witness—I mean as you come to each one of them and describe each claim by this witness, without our renewing our objection the question shall be deemed to be objected to on behalf of the entrymen of that particular claim.

Mr. SHERIDAN. We consent to that understanding.

Mr. HUGHES. That will save encumbering the record with repetitions of objections.

Mr. SHERIDAN. Very well.

Q. I now invite your attention to the next entry on the southern tier of this group, namely, the Lucky Baldwin claim, otherwise described as survey No. 58, and I will ask you to state what improvements and developments you found on that entry?—A. I found two coal crops in that entry, designated as station 270 and station 271.

Q. Where is station 270 with reference to the area covered by the Lucky Baldwin?—A. Approximately in the southeast corner of the claim.

Q. What was the nature of the openings, if any, that you found?—A. I think that was just a coal seam which had been shown by the bank sliding. No work had been done on it, and it showed a foot and a half of coal at that point.

Q. So that this was a slide, as you say, and not a development, not being the work of man?—A. Yes—

Mr. GRAY. I object to that as leading and suggestive.

A. (Continuing). And the same thing applies to station No. 271.

Q. Did you find any other improvements or developments on this area?—A. I did not.

Q. I will now call attention to the Lyons claim, otherwise described as survey No. 71, and I will ask you to state what improve-

ments or developments you found on that claim.—A. On that claim, in the southwest—approximately the southwest corner—I found four separate veins of coal.

Q. In your answer, Mr. Kennedy, I do not desire any reference to be made to the exposures of coal save when they were the result of development by the hand of man, and not by natural occurrence. Were these developed by some persons, or were they merely natural exposures?—A. Station 271 was shown to be a natural exposure, and showed a foot and a half of black coal. Station 273, no work had been done on that. There was two and a half feet of coal in place. Station 274, no work had been done on that, and 4 feet of coal approximately. Station 275 there was 1 foot of coal showed, but no work done on that, but is shown by the banks sliding.

Q. Were there any improvements or developments of any kind on this entry?—A. That was the extent of the improvements passed by me.

Q. I now invite your attention to the Bedford claim, survey No. 69, and I will ask you to state what improvements or developments you found on this claim.—A. I found four different exposures on that claim; coal exposures. At station 28, it showed 5 feet of coal, with some shale in it.

Q. Was it a natural exposure?—A. The banks had slid on that. It is possible there was some little work done on it. Station 280, there was a foot of coal placed; no walls shown, and no work done. Station 279, 1 foot of coal, and there was no appearance of any working having been done. Station 278, there was no work done on that, and it showed 2 feet 3 inches of good black hard coal.

Q. Were there any other improvements or developments of any kind on this entry?—A. That was the extent of what I found on it.

Mr. SHERIDAN. We will make no inquiry with reference to the Belmont entry, No. 65, for the reason it is entered on the records as having no entry made on it and therefore it is not involved.

Q. I now invite your attention to the Boston claim, otherwise described as survey No. 64, and I will ask you to state what improvements and developments you found on that claim.—A. Station 282, on the southwest corner of the claim. Station 283 showed 1 foot of coal, with no work done. Station 284 was coal, 1 foot, with no work done on it.

Q. What was the nature of the development at station 282?—A. Station 282, no development. That was the location, the southwest corner of the Boston claim. There was no coal crop.

Q. Were those all the improvements and developments that you noticed on this claim?—A. Yes, sir.

Q. Now, take the Bozeman claim, otherwise described as survey No. 67, and I will ask you what improvements and developments you found on this claim?—A. Found no improvements or developments on that claim.

Q. I now invite your attention to Calais claim, otherwise known as survey No. 70—did you find any improvements or developments on this claim?—A. No, sir.

Q. The next one is the Carlsbad, otherwise described as survey No. 45; state what improvements and developments you found on this claim.—A. I found at station 2 on that claim a vein of 8 feet 6 inches of good coal.

Q. Natural or artificial exposure?—A. Some work had been done on that. The bank had slid, and it showed as if there had been just an open cut.

Q. About how much?—A. About practically 3 or 4 feet wide and 7 or 8 feet long.

Q. Into the hill?—A. There was no covering. It did not show that it went under cover. It was an open cut. In No. 3 I found 9 feet of coal, and perhaps more, in the vein, but the banks had slid, covering it up, if there had been any more there; and it showed some signs of work having been done on it.

Q. About what was the extent of the work that had been done at this point?—A. Well, it was approximately an open cut 3 or 4 feet wide and 6 to 10 feet long.

Q. About how deep? Or was it merely an excavation?—A. It was an excavation driven in on the triangle.

Q. The next?—A. Station 32; there was no coal, and no work had been done at that point. That was done for the purpose of getting the true strike and dip of the rock at that point. No. 33, the same conditions; and on this claim there was about a half a mile of trail.

Q. Did this trail lead off this entry?—A. Yes, sir.

Q. Onto what other entry or entries?—A. It led to Nos. 44, 68, 50, and also 43, 58, and 57.

Q. In referring to these numbers, do you mean the survey numbers?—A. The survey numbers, on each one, and no other.

Q. What was the nature of the trail that you observed?—A. On this entry?

Q. Yes; on this entry of Carlsbad.—A. That was a very good trail. It was a wagon trail for the lower or the southern portion of it, and had been cut out and graded in very good shape.

Q. Referring now to the Deposit claim, otherwise described as survey 43, state what improvements and developments you found on this claim.—A. At station No. 9, on that claim, showed 5 feet of—just recall that—

Some prospect work had been done on it and about a foot of coal had shown up, and Mr. McGrath said—

Mr. HUGHES. Wait a minute. We object to any statement by Mr. McGrath as hearsay.

Mr. SHERIDAN. Strike out what Mr. McGrath said and proceed.

A. About a foot of coal shows up on that claim at this time and the bank had slid in, and I could not say how much more there was. At station 10—

Q. Just before leaving station 9, Mr. Kennedy, was that a natural or an artificial opening?—A. That looked as though work had been done on that. It had slid in so it was impossible to tell just how much.

Q. Now, take No. 10.—A. No. 10 showed 3 feet of coal, and that was not fully exposed; there may have been more there. The bank had slid in on that, and I thought some work had been done on it.

Q. Was this opening natural or artificial?—A. Some work had been done on that opening; it is impossible to state how much. No. 11, or station 11, there was coal 2 feet, of slate 1½ feet, and 3 feet of coal below that. Some work had been done on this opening.

Q. How large was the opening, in a general way?—A. One opening—one open cut run about from 2 to 5 feet wide and about, in

length, I judge, there was 8 or 10 feet, until they exposed the full vein of the coal, and then that work having been done so long it had slid, and I am not able to say exactly how much of that had been done. No. 12, I saw about 2 feet of coal at this opening and some work had been done on it, and the bank had slid, but I am satisfied there was more coal than that in the vein, but I could not see it.

Q. Now, with regard to the opening, could you say anything about the size of it?—A. No; I have not noted anything on that. No. 13, there had been no work done there; there was about 4 feet of coal shown up by the roof turning over. There were—at No. 34—there was no coal veins shown up.

Q. Artificial or natural opening?—A. No coal; just strata rock.

Q. No work done?—A. No work done. And 33 was the same.

Q. No work done there?—A. No work done nor any coal, and 32 was in the same condition.

Mr. GRAY. Not on this claim at all?

A. Why, I think the notation of the point is at the left hand of the station; I think the figures were so close to the line that the figures can not be put there. All of the stations are noted on the left-hand side of the station mark. The point of discovery is noted at the left hand of the station.

Q. Were these all the improvements and developments that you observed on this entry?—A. There was about a sixteenth of a mile of trail on the southeast corner of this claim.

Q. Where does that trail extend to?—A. It leads down to the Cunningham—what is known as the Cunningham cabin.

Q. On what entry?—A. It lies approximately on a line between the Lucky Baldwin and the Avon, surveys 57 and 58.

Q. Is that the same trail to which you referred in describing the Carlsbad?—A. Yes, sir.

Q. Now, inviting your attention to the Candelaria claim, otherwise described as survey No. 48. I will ask you to state what improvements and developments you observed on this claim.—A. That showed probably 4—showed 5 feet of coal.

Q. You mean station No. 4?—A. Station No. 4 showed 5 feet of coal placed and the banks slid in; some work done on that, but I can't say how much.

Q. When you say, Mr. Kennedy—you say you can not state how much work had been done. What is the reason for that statement?—A. The hole where the excavation had been made, the banks have slid and filled that hole up so I was unable to get the area excavated.

Q. Were the surface conditions such on this group that the surface would take a long time to slide in, or just a short time?—A. Why, I should judge from the appearance of the surface, unless it was timbered, that it would be liable to slide with the first snowstorm that came up.

Q. Precipitous surface and irregular?—A. It is irregular.

Q. Soft formation or rock?

Mr. GRAY. We think Mr. Kennedy should describe that without your suggestion.

Mr. SHERIDAN. I wish to indicate the nature of the information I want.

A. It varies very much. In some places it has very little surface on the ground and in other places apparently there is considerable surface.

Q. What I want to learn from you, Mr. Kennedy, is this: Are the surface conditions in that part of Alaska, where these entries are located, more apt to slide than they are in the ordinary coal communities in the United States that you have been in?—A. They are not more apt, I don't think. In some places there the hills are very abrupt, and it will slide there where that is the case; it will slide in there. It depends; if the ground was not so much of a slope it might not slide so easily.

Q. Proceed.—A. At station 5 I found 5 feet of coal that had the appearance of some work having been done. The banks had slid.

Q. Was the condition of this station such that you could not state the amount of work done or the extent of the cut?—A. I could not state the amount. The conditions were such that I could not state the amount; no. At station 6 I found 10 feet of coal that had been opened, but at this time could only be seen on one side, as I remember that. I would not be absolutely clear about just exactly how much was done on that, because I don't have the figures on it, but as I remember it it was almost straight bank, and some work had been done on it. No. 7 was a coal streak; no work done. I could only see the streak of the coal—coal indication. No. 8, 2 feet of coal placed and the banks had slid. There may have been more coal in there, but I was unable to determine the amount of work done on it.

Q. Were these all the improvements and developments which you saw on this entry?—A. Yes; that was all the improvements on that entry.

Mr. SHERIDAN. Your honor, inasmuch as the next entry to be considered in its order has a great many details which I wish to bring out and emphasize, and since it is so close to the time fixed for adjournment, I suggest, with the approval of counsel for the claimants, that we now adjourn until to-morrow morning at 10 o'clock.

Mr. GRAY. I assume that we will not hold more than one session to-morrow?

Mr. SHERIDAN. Whatever will suit the convenience of counsel will suit me in that respect.

Mr. HUGHES. We might run a little more than the two hours and then adjourn for the day.

The COMMISSIONER. These proceedings stand adjourned then until to-morrow morning at 10 o'clock.

(And thereupon the further inquiry in this matter was adjourned to 10 o'clock a. m., November 20, 1909.)

NOVEMBER 20, 1909.—10 A. M.

Appearances: Hon. William J. McGee, United States special commissioner.

Mr. James M. Sheridan and Mr. William B. Pugh, counsel for the Government; Mr. E. C. Hughes and Mr. John P. Gray, counsel for claimants.

ANDREW KENNEDY on the stand.

Direct examination (resumed) by **Mr. SHERIDAN**:

Q. I now invite your attention to the Agnes claim, otherwise described as survey No. 47, and I ask you to state what improvements and developments you found on this claim?

Mr. GRAY. It is understood that the same objections which were made yesterday are considered as being remade as you proceed from one entry to another, to avoid encumbering the record by remaking these objections.

Mr. SHERIDAN. Under the agreement made between counsel yesterday, yes.

A. On this survey I found several coal crops which I will describe by stations which are on the map, and which were located by me. At station No. 40, I found a coal vein; the bank had slid and I could not see the thickness of it. Some work had been done on this, but I could not determine the amount.

Q. When you say you could not determine the amount, do you mean because the surface had slipped into the cut in such a way as to make it impossible for you, even though you examined it, to tell what the extent of the cut originally had been?—**A.** Yes. At station 42. Take station 41 instead of station 42. At this point we could see 4 feet of coal, with bad conditions, very irregular. The bank had slid on this and I was unable to determine the amount of work done on it. At station 42 I could see that a coal vein was there, but could not determine the amount of coal nor the amount of work done on it on account of the bank sliding. At station 43 the bank had also slid, and there was every indication of 8 feet of coal at this point. Some work had been done on it, but I could not determine the amount. At station 44 considerable work had been done on this, but the bank had slid and at the time I made the examination I could see a vein from 4 to 6 feet of coal at this point.

Q. Approximately, how much work, in your opinion, had been done at this point—that is, station 44—or could you estimate it?—

A. I could make an approximate estimate, and from the appearance there was an open cut there. No timbering had been done and would show that a cut about 6 feet wide and perhaps 20 feet in length.

Q. Cut into the surface of the hill?—**A.** Yes, driven into the hill in on the coal vein.

Q. Was it under cover at any point?—**A.** No, sir. At station 45 the bank had slid and I could see 2 feet of dirty coal, and the vein, from indications, was larger than this, but I was unable to see it on account of the bank sliding in. Some work had been done already on this claim.

Q. When you say some work, could you estimate the amount of work more definitely at station 45, or was it impossible?—**A.** That is impossible—to state the exact amount of work done—on account of the bank having slid in and covered the excavation. At station 46 no work had been done on this, and it showed the banks having slid; it showed to be a large vein of coal. At station 48 there was no coal found at that point and no work done. I checked that for the purpose of determining the strike and dip of the vein on this entry. There is about a half a mile of trail.

Q. Does the trail of this entry lead to any of the other entries on this group?—A. This trail begins on survey 58 and continues to 51, 47, 42, 41, 37, 39, 50, 68, 45, 43, 57, and 58.

Q. In what condition was that part of this trail described by you as crossing so many of these entries where it comes into and passes over the Agnes claim, which we are now considering?—A. That was a well-constructed trail; considerable work had been done on it.

Q. Passable condition to a pedestrian?—A. Yes, sir.

Q. Could you take a wagon along it?—A. I do not think you could in that particular section.

Q. I now invite your attention to the Tenino claim, otherwise described as survey No. 51, and ask you to state what improvements and developments you found on this claim.—A. On this claim I found several coal crops, which I will describe, and several tunnels driven in the hill. At station 15 there was a tunnel which work had been done on. It was timbered and in about 30 feet, driven in a northerly direction, and this tunnel was about $4\frac{1}{2}$ feet of coal.

Q. Give the height and width of this tunnel, its interior measurements, approximately.—A. Approximately the tunnel was about $4\frac{1}{2}$ feet on the bottom, $3\frac{1}{2}$ feet on top, and about 5 feet high.

Q. Was it well timbered throughout?—A. Fairly well timbered. At No. 16 I found quite an extensive tunnel driven in on a vein of coal. That was driven in the main tunnel in a southwesterly direction, and the tunnel started at an elevation of about 300 to 400 feet and was driven practically level. At the face of this tunnel the surface would have an elevation of about 700 feet.

Q. How far in do you say this tunnel was driven?—A. This tunnel was driven in a southwesterly direction approximately 235 feet, with branches off of it. One branch was 208 and one 84 feet, and one 63, and other short branches. At one point approximately at the mouth of this tunnel there was a 33-foot vein of coal which continued as though extended in on the vein.

Q. Now with regard to the main tunnel at this station No. 16 which you describe as about 235 feet in, is that tunnel timbered?—A. It is.

Q. Well, timbered?—A. Fairly well timbered.

Q. Did it show evidence of having been kept in repair up to a recent date.—A. It did not show that any recent work had been done on it.

Q. About how high and how wide was this tunnel?—A. The tunnel was a peculiar construction at the mouth. Right at the mouth it was $4\frac{1}{2}$ feet wide and went in a short distance and made a branch. One of these was $6\frac{1}{2}$ feet wide.

Q. Now, just a minute. Was that branch to the right or to the left, as you go in?—A. The branch which I gave the size of is to the left.

Q. Yes.—A. That was about 5 feet high, but the general width of the tunnel was about 5 feet; from 5 to 6 feet in height.

Q. Now, you say the direction of this main tunnel at station No. 16 is to the southwest?—A. It is.

Q. The rise there, as I understand you to say, is very sudden?—A. Of the hill?

Q. Yes.—A. Yes.

Q. So this tunnel drives toward a high hill and into it?—A. Yes, sir.

Q. Now, take the first branch of this tunnel which you describe as about 208 feet in from the main tunnel. Give us approximately the height and width of the tunnel and the condition of repair in which you found it.—A. The width was about 4 to 5 feet and the height was about 5 to 6, and in fair repair.

Q. Had coal—a considerable body of coal—been taken out from that location?—A. There had; yes.

Q. Now, take up the next branch of this tunnel, which you describe as about 84 feet long. Give the conditions there with regard to the repair and width and height.—A. The width and height was the same as previously mentioned, and in fair condition.

Q. Timbered?—A. Yes.

Q. Now you described one other branch about 63 feet in; tell us about that.—A. The same answer would apply to that. That was practically of the same width and conditions.

Q. Then there were some other short branches. Could you give a general statement regarding these shorter branches? What was their condition?—A. Those shorter branches were driven in narrower to probably test the quality and amount of coal, and were driven in narrower, and in fair condition.

Q. You may now take up the next station on this entry.—A. Station No. 17 was a point just above the mouth of this tunnel where the coal was partly exposed. Some little work had been done and it showed 14 feet of good coal at that point.

Q. Could you give a description of the extent of the work done at this point on station 17?—A. I do not have the notes, but approximately there was a good—the vein was cut down for a width of about 20 feet and perhaps 4 to 5 to 6 feet into the vein.

Q. Under cover or exposed?—A. Exposed; no cover.

Q. Now the next station.—A. Station No. 18 showed that some work had been done at this point, for the bank had slid, and every appearance of there being 13 feet of coal at this point.

Q. Could you give an approximate description of the cut at station 18, or the extent of it?—A. There was very little evidence there to show how much had been done at that point.

Q. Had it been much or little work?

Mr. GRAY. I object, as impossible, from his former questions and answers, to answer that.

Q. Answer the question.—A. Approximately very little work. The object at most of these points seemed to be to determine and satisfy themselves as to the amount of coal at these points.

Q. Now take up the next station, No. 19.—A. There was a tunnel driven into the hill 20 feet, timbered, with 4 feet of a mixed vein of coal and shale and $1\frac{1}{2}$ feet of good coal in the bottom of this measurement. The coal was irregular at this point.

Q. What was the condition of the tunnel?—A. Fair condition.

Q. Was the size approximately the same as that of No. 16 as regards height and width?—A. Yes, sir.

Q. Was this tunnel timbered?—A. Yes, sir.

Q. What direction did this tunnel point?—A. It points in a westerly direction.

Q. Is the rise of ground to the west gradual or sudden?—A. It is rather sudden.

Q. About how much of a rise would there be from the mouth of the tunnel at station No. 19 over to the west boundary of this Tenino claim?—A. I did not get that. I could not hardly approximate it.

Q. But you said it was rather sudden.—A. Yes.

Q. Now take station No. 20.—A. Station No. 20 was a tunnel driven into the hill about 10 feet. In this tunnel was a vein of a mixture of shale and coal. Had not been driven—apparently had not been driven in far enough to get to the regular strata.

Q. What was the condition of this tunnel?—A. It was in fair condition.

Q. Describe its size.—A. The size of this tunnel, I think, was approximately $4\frac{1}{2}$ to 5 feet at the bottom and about 4 on top and 5 to 6 feet in height.

Q. Timbered?—A. Yes, sir.

Q. What direction?—A. That was driven in a westerly direction.

Q. Was the rise of ground to the west about the same as at station No. 19?—A. Practically.

Q. Now take station No. 21.—A. Station 21 was a tunnel. The timber did not look very good in that and I did not feel like going in—did not think it was safe to go in—and I don't know the exact distance it was driven.

Q. What, approximately, was its size at the mouth?—A. Four or five—five, approximately.

Q. Could you see into it for any considerable distance?—A. Why there seemed to be a little cave in that blocked the water, if I remember right, but I could not see into that a very great distance, probably 20 or 30 feet.

Q. Take station 22.—A. Station 22 was a tunnel in bad condition. I did not get the distance that was driven in.

Q. When you say in bad condition what do you mean?—A. Why, with the timbers—the roof did not look solid and had slid some, and in that case very oftentimes they are liable to have gas in, and I did not feel it was necessary or safe to go in there.

Q. What was the condition of the timber?—A. The timber showed signs of decay.

Q. Take the next station on this entry, No. 23.—A. No. 23 was a vein of coal approximately 8 feet thick. A little work had been done on this and the banks had slid, but I was unable to determine the amount.

Q. Take station 24.—A. Station 24 was a vein higher on the hill than 23, and I could see there was some coal in this, but the bank had slid so much I could not determine how much.

Q. Take station 25.—A. I found the same conditions at 25 as were at 24.

Q. Station 26.—A. I found the bank had slid at this point and from every appearance available at that time showed a vein of 12 feet thick. I did not note whether there was any work done at that point.

Q. Do you recall whether or not there was any work done on it?—A. I do not remember; I don't remember what the conditions were at that time.

Q. Now, take station 27.—A. This was a slide in the hill, no work having been done on the part exposed at this time. Natural exposure was about 2 feet of coal.

Q. The next station apparently on this entry is station 27. Take that now.—A. At this point there was a coal crop and the surface slid in, which had the appearance of about 8 feet of coal; was unable to see this distinctly. That was an estimate.

Q. Had any work been done at this point?—A. Little, if any.

Q. Are these all of the stations set out on the Tenino claim?—A. In this claim—this seems to be all the stations set out. But there was a cabin on this claim and a blacksmith shop, which are shown to be along the trail, and marked cabin without any station number to it.

Q. Describe the cabin roughly.—A. It was a log cabin, in good condition, about 20 feet by 30 feet.

Q. Is there a trail on this entry?—A. There is about three-fifths of a mile of trail on this entry.

Q. Is this the same trail which you described this morning as passing through a large number of these entries?—A. It is.

Q. What is the condition of the trail on this entry?—A. The part running north and south was a good, fair trail. The other was not so heavy a trail; not so much work done on it.

Q. Was any part of it on this entry fit for a wagon road?—A. I would not think so.

Q. Just a foot trail?—A. Just a foot trail.

Mr. GRAY. I suggest that you do not lead him, Mr. Sheridan. Just let him describe it.

Mr. SHERIDAN. I think that is obvious, Mr. Gray.

Q. Were there any other improvements or developments other than those described by you on this entry?—A. That was all that I examined.

Q. Did you see any others?—A. I did not.

Q. Now, Mr. Kennedy, in your testimony so far on this map you have made reference to stations very frequently. I wish to ask you if these stations were set up by you, yourself, at the time of this examination?—A. These stations, we endeavored to find a corner and run from that corner and locate these points on the claim; that is, give the approximate location of them.

Q. You were at these stations yourself when you made these notes that now appear on the map?—A. Yes, sir.

Q. The notes to which you refer now in the book before you are the notes made at the time you examined the ground?—A. Yes, sir.

Q. Now, you spoke of several tunnels on this Tenino claim. I want to first take up with you the tunnel at station No. 16. Did you attempt to estimate the cost of that tunnel?

Mr. GRAY. I object to that, upon the ground that no proper foundation has been laid for such testimony.

A. I did. I estimate that under ordinary mining conditions in the mining locality that this tunnel could be driven for \$4 per lineal foot; but from the general observation of conditions which it costs to do work in Alaska, I would estimate that it would cost \$20 per lineal foot.

Q. Twenty dollars a foot?—A. Yes; and all of the other tunnels would be approximately on the same basis.

Q. Now, what did I understand you to say was the elevation at which this station, station No. 16, was made?—A. An elevation of about 300 or 400 feet, I should judge.

Q. The direction of this tunnel, as extended, was to the southwest?—A. To the southwest; yes.

Q. Was there a continuous rise in that direction?—A. There was.

Q. I now call your attention to the Rutland entry, otherwise described as survey No. 52, and ask you to state what improvements and developments you found on this entry.—A. I found no improvements or developments on this entry.

Q. Of any kind?—A. Of any kind.

Q. Is this entry at a greater elevation than the Tenino claim?—A. It is:

Q. We have already—

A. (Interrupting.) I would like to correct that; a greater elevation at points. There are some points on the Tenino claim which will run as high as 750 feet.

Q. What is the highest point, approximately, on the Rutland claim?—A. About 1,250 feet.

Q. Toward what other entries is that tunnel at station No. 16, on the Tenino claim, driven?—A. The direction of the tunnel—the tunnel is driven on—it would enter the Rutland claim on survey No. 52.

Q. Now, Mr. Kennedy, as an engineer, a coal-mining engineer of the experience you have had, which has been set out in qualifying you in this inquiry, I will ask you to state whether, from your observation on the Tenino claim, the developments thereon were intended solely for the development of the Tenino claim or for the development of the Tenino and other claims together.

Mr. GRAY. I object to that question, on the ground that the question is immaterial, that it is incompetent, and that no proper foundation has been laid therefor; and that it is improper in form, both on behalf of the Tenino claim and of the other claimants.

The COMMISSIONER. Answer the question.

A. I would say from the direction this tunnel was driven it was driven for the purpose of mining coal off the Tenino claim and other claims which lie to the west of it.

Mr. GRAY. I move that the answer be stricken out as not responsive.

Mr. SHERIDAN. I would say too responsive, Mr. Gray.

Mr. GRAY. It is not responsive.

Q. I now invite your attention to the Collier claim, otherwise described as survey No. 49, and ask you to state what improvements and developments you found on this claim?—A. I found on this claim several points which are indicated by stations numbered thereon, and will describe them individually. Station No. 28, I found a vein of coal. The bank had slid, and some work had been done on it. This vein was from 6 to 7 feet thick. I can not say the amount of work done.

Q. For what reason?—A. On account of the banks having slid and filling the excavation. At station 29 was a tunnel driven in a westerly direction. I was informed that this tunnel—

Mr. GRAY (interrupting). Hold on. I object to what you were informed.

Q. Give your own actual knowledge of the situation, Mr. Kennedy.—A. The tunnel had the appearance of being irregular. On that account I deemed it not necessary to make a thorough examination of it.

Q. What do you mean by irregular?—A. The strata was irregular at that point. I can not say how far it was in.

Q. What, approximately, was the size of the tunnel at its mouth?—A. About $4\frac{1}{2}$ on the bottom and about 4 on top and 5 or 6 feet high. Nearly all of the temporary tunnels were driven about that size. At station 40 I found a vein of coal.

Mr. GRAY. Where was that, Mr. Kennedy?—A. That was 30 instead of 40, I believe. This was a vein of coal 5 or 6 feet thick, shown by natural exposure and right on the triangular point of two creeks. No work had been done on that.

Q. Were those all the improvements and developments that you found on this entry?—A. Yes, sir.

Q. I now call attention to the Maxine claim, otherwise described as survey 46, and I will ask you to state what improvements and developments you found on this claim.—A. I found on this claim apparently one exposure, station 49. I will describe it. That apparently was a large coal crop. I could not see the full size of it as it was partly covered with snow.

Q. Any other evidence of development there or work having been done?—A. There was some of it, and it appeared to be a large vein of coal.

Q. Could you approximately describe or estimate the amount of work that had been done at this point?—A. I could not, because I could only see one side of it.

Q. Would you say it was a large amount or a small amount of work?

Mr. GRAY. I object to that question as incompetent and cross-examination of the Government's own witness.

A. I would say that no large amount of work had been done on it.

Q. Did you observe any developments or improvements of any kind on this entry?—A. There was about a sixteenth of a mile of trail running across that entry in the southeast corner.

Q. Is that the same general trail that you have described that followed around through the other entries heretofore?—A. Yes, sir.

Q. I now invite your attention to the Octopus, otherwise described as survey No. 42.—A. I found several exposures on this of which I will describe in detail. At station 48 was a large exposure almost entirely covered with snow; but from appearances was a large vein of coal and would measure about 40 feet.

Q. Any work been done there?—A. I could not tell.

Q. Did its appearance present that of an artificial development or a natural exposure?

Mr. GRAY. Objected to as incompetent and cross-examination of the Government's own witness.

A. Had the appearance of artificial exposure.

Q. Take the next one.—A. No. 50, 51, 52, and 53 were coal crops which I could see traces of, but were covered with snow. I could not make any estimate as to the thickness of coal or the amount of work done on them, if any had been done. There is a little over a half a

mile of trail on this entry which runs from approximately the southwest corner to the northeast corner.

Q. Is this the same general trail already referred to by you?—A. It is.

Q. I now invite your attention to the Lobster claim, otherwise described as survey 41, and ask you to state what developments and improvements you found on this claim.—A. I found on this claim apparently three exposures, which I will describe from my notes. Fifty-four—

Q. (Interrupting.) You mean station 54?—A. Station 54 had the appearance of a large vein of coal with impurities in it. This was covered with snow and I could not determine whether any work had been done on it or the exact size of the vein; 55 was a coal crop covered with snow—partially covered with snow. I could not see the amount of work done on that nor the thickness of it. At station 56, conditions were similar to 55.

Q. Just a moment. When you say, with regard to stations 55 and 56, that you could not determine the amount of work done on them, or at these points, do you mean to say there was any evidence of any work having been done from what you did see?

Mr. GRAY. Objected to as incompetent and a cross-examination of the Government's witness.

A. From the appearances I should think some work had been done on these claims; and if I remember right we had to kick enough snow away to determine there was coal there.

Q. What would you say? That the work that had been done was much or little?

Mr. GRAY. Objected to for the same reasons.

A. The work that had been done had not been to any great extent.

Q. Were there any other stations on this entry?—A. There was on this entry about a quarter of a mile of trail.

Q. Is that the same general trail already described by you?—A. It is.

Q. So that stations 54, 55, and 56 are the only stations appearing on the Lobster claim?—A. That is all that was located by me.

Q. I now call your attention to the Socorro claim, otherwise described as survey No. 44, and I will ask you to state what improvements and developments you found on this claim.—A. I found on this claim several exposures which I will endeavor to describe from my notes. I can say that the exposures all found on this entry were along a creek, and in nearly every instance the bank had slid, and it was impossible to see the exact conditions as they would exist if they had been opened up.

Q. You might also state in that general recollection, whether or not the stations set out on that area by you describe solely cuts, or whether there would be any tunnels or other developments among them?—A. I think these are all cuts and no tunnels.

Q. I now ask you to refer to your notes which you have with you for the purpose of verifying that statement.—A. There is no tunnels that I saw along that creek.

Q. Did you see any tunnels anywhere on this entry?—A. No, sir.

Q. Did you see any other improvements or developments on this entry?—A. A trail running across the southeast corner of this claim.

Q. Is that the same general trail already described by you?—
A. It is.

Q. I now call your attention to the Clear claim, otherwise described as survey No. 68, and I will ask you to state what improvements and developments you found on this claim.—A. On this claim I found three different exposures, designated as 70, 72, and 73.

Q. Stations?—A. Stations 70, 72, and 73.

Q. Were they natural or artificial exposures?—A. The first was an artificial. No. 72 was probably a natural exposure. No. 73 there was no coal; had been opened up. The strike and dip of the rock was down, as it appeared regular at that point.

Q. Now, turn to this station on this claim which you describe as being artificial and state the amount of work that has been done at that point.—A. The bank had slid, and I did not seem to be able to determine the amount of work done on that. It showed 5 feet of coal cropping in a slide.

Q. Were there any other improvements or developments on this entry?—A. There is about a half a mile of trail on that entry.

Q. Is this the same general trail already described by you?—
A. It is.

Q. Now, calling your attention to the Tampa claim, otherwise described as survey No. 66, I will ask you to state what developments or improvements you found on this claim.—A. I found no improvements whatever on this claim.

Q. I now invite your attention to the Tulare claim, otherwise described as survey No. 61, and ask you to state what improvements or developments you found on this entry.—A. At station 285 on this claim I found 4 feet of good, black coal, with no walls exposed and no work done on that. Station 286—

Q. Just before you leave station 285, had any work been done at this point?—A. No work had been done at that point. Station 286, which was just to the west of 285, I saw from the distance, saw the black coal there. I did not go to it.

Q. Did its appearance from where you viewed it indicate that there had been any developments at that point?—A. No, sir.

Mr. GRAY. I object as incompetent and no proper foundation laid for testimony on that question.

A. I could see that exposure—

Mr. GRAY (interrupting). And calling for the opinion of the witness without any personal examination.

A. I could see that exposure very distinctly and it showed no indications of work having been done on it. Stations 287, 288, 289, 290, and 291 showed up five veins of coal in the side of the hill where the bank had been eroded away. I believe that a little work had been done on the upper seam, to the top of 287, but I am unable to say how much. These veins varied in thickness from 1 to 9 feet. They were presumably a natural exposure.

Q. Were there any other developments or improvements of any kind on this entry?—A. That is all that was located by me.

Mr. SHERIDAN. We desire now to invite the attention of counsel for claimants to the fact that the Wallula claim, indicated on this map as survey No. 63, bears a legend "No entry made," therefore we shall not consider it.

Mr. HUGHES. It is not involved in this hearing

Mr. SHERIDAN. No.

Q. I now invite your attention to the Wabash claim, otherwise described as survey No. 62, and ask you to state what improvements and developments you found on this claim.—A. I found no improvements or developments on this claim.

Q. Of any kind?—A. Of any kind.

Mr. GRAY. That is the Wabash?

Mr. SHERIDAN. Yes.

Q. Next take the Plutocrat, otherwise described as survey No. 69, and state what improvements and developments you found on this claim.—A. At station 293 on this claim I found, right in the neighborhood or close to the point designated as station, four different seams of coal.

Q. Artificial or natural exposures?—A. They were artificial. I should say natural. These were called slides and so marked.

Q. Natural?—A. Yes.

Q. Please take them up in detail and describe them.—A. I just marked these as four different seams of coal—coal slides.

Q. So there was no work done on them?—A. No work has been noted on them.

Q. Were these all the developments and improvements that you found on this entry?—A. Yes, sir.

Q. Now turn to the Ludlow claim, otherwise described as survey No. 60, and tell us what improvements and developments you found on this claim.—A. I found, as noted on the map, two different exposures, which I will refer to the notes to give in detail. No. 77 was a tunnel driven into the hill on a direction of about north 45° west for a distance of 72 feet, and a branch to the right off of this driven in a northwesterly direction for a distance of about 46 feet. The width of this was approximately 5 feet and the width of the tunnel at the mouth was 3 feet 6 on the bottom, 3 feet on top, and 5 feet high.

Q. Were these tunnels well timbered?—A. Fairly well timbered.

Q. In the direction in which these tunnels penetrated, did the ground suddenly rise, or was it gradual?—A. It was rather a sudden rise there.

Q. Toward what other claim did this tunnel drift?—A. Toward the Newgate, survey No. 50.

Q. How far is the mouth of this tunnel from the eastern boundary of the Newgate claim?—A. It would be approximately 200 feet.

Q. Is the eastern boundary of the Newgate claim directly in front of the direction in which this tunnel is driving at a greater elevation, or a lesser elevation, than the mouth of the tunnel?

Mr. GRAY. I object, upon the ground that it is not shown that the witness has sufficient knowledge to answer the question, and no foundation has been laid.

Mr. HUGHES. And for the further reason that it does not perhaps sufficiently appear in the record transcribed of his words that he examines the map, and evidently gives his testimony with reference to facts shown on the map rather than from any independent recollection of his own.

Mr. SHERIDAN. I will ask Mr. Kennedy to answer that objection himself. What is the source of the knowledge or information you are giving?

A. Why, I took and located these points. I had an aneroid with me and took elevations of a great many of them.

Q. Now, read the question.

(Question read by the stenographer.)

Mr. HUGHES. Again, counsel is pointing to the map, and directing the attention of the witness to the map so he could ascertain what its lines indicate rather than speaking from memory. We are not objecting to his giving his testimony from his personal knowledge.

Mr. SHERIDAN. I claim the right to do that.

Mr. HUGHES. One moment. Let me finish my objection. What we are objecting to is his refreshing his memory from a map which he did not make, and from which the evidence discloses the lines were taken from other maps made by other people, topographic, or geographic, or geological maps.

Mr. SHERIDAN. Read the question.

(Question read.)

Mr. HUGHES. We have no objection, let me say, to his answering that question from his own recollection, but we do object to his aiding that recollection except from memoranda he made at the time himself, and which upon examination will refresh his memory.

Mr. SHERIDAN. I desire to place of record the fact that I am relying exclusively upon Mr. Kennedy's personal knowledge of this situation, and that when I point my pencil to any stations on this map it is for the purpose of my own guidance and not for the instruction of Mr. Kennedy. I propose to follow Mr. Kennedy's description. Go ahead and answer the question.

A. At station 77 I found that I had an elevation of 710, and at station 78, which is due west of that approximately 500 feet, I had an elevation of 770 feet.

Mr. GRAY. Seven hundred and seventy?—A. Yes. I want to add that I set my barometer from it instead of carrying it as I do when I check up my readings with it, and not in general.

Mr. HUGHES. Permit me, for my information. The figures you have given are those made by you at the time?

A. Yes, sir.

Mr. HUGHES. And by the use of your own aneroid?

A. Yes; and set at tide-water level.

The COMMISSIONER. Any objection to that?

Mr. HUGHES. We do not intend to object to that kind of testimony.

Q. Please describe any other stations you may have set up in this entry.—A. Station 82 showed a small tunnel in about 20 feet. In this tunnel there is about 4 feet of coal. This is driven—my notes do not show the course it is driven in.

Q. What was the condition of this tunnel at station 82?—A. The tunnel was in fair condition, but it had slid—the sides—the face had slid in some so the whole size of the tunnel could not be seen.

Q. About how high; and how wide?—A. These tunnels were nearly all about 4 feet wide at the bottom, 3 feet at the top, and 5 or 6 in height.

Q. Now, in regard to the tunnel at station 77, which you have already described, you stated that this was about 72 feet in. Give us the interior conditions of that tunnel and its branches that you also referred to.—A. This tunnel was in fair condition.

Q. Timbered?—A. It was timbered where necessary so that the tunnel was in good condition, but I do not remember whether it was timbered in the face or not, but if it had been necessary it would have been timbered.

Q. Do these remarks equally apply to the branches of this main tunnel?—A. They do.

Q. Are there any other improvements or developments of any kind on this claim?—A. There is a cabin on this claim—a log cabin which I estimate to be about 12 by 12; and also about a half a mile of trail.

Q. Is this the same general trail that you have described to-day in your testimony, and which passes through several of these entries?—A. It is.

Q. I now call your attention to the Newgate claim, or otherwise described as survey No. 50, and ask you to state what improvements and developments you found on this claim.—A. These figures seem to have been blurred on this map. Is there any objections to looking at another one, or a print of it?

Mr. SHERIDAN. The print is taken from this original.

Mr. HUGHES. We do not object.

Mr. SHERIDAN. For the information of counsel I will state this is a print of that [indicating].

Mr. HUGHES. Where you are simply trying to locate stations we do not object to the use of the map.

A. What I was about to say was that the coloring here is in soft pencil, and it occasionally blurs numbers.

Mr. HUGHES. No objection.

A. I found some coal exposures on this which I will explain in detail. Station 75 was just a small natural coal showing.

Mr. GRAY. What number was that?—A. Seventy-five. Seventy-six was a small tunnel in about 10 feet, with about 10 feet of coal. This is approximately 10 feet.

Q. In what direction was it run?—A. Just a minute. This 10 feet of coal, part of it was down in the tunnel, the tunnel was not the full width of the vein, and the coal projected above it, showing 10 feet of coal. The tunnel was driven in—I did not get the direction of that tunnel.

Q. Was it timbered?—A. It was.

Q. Was it in good condition?—A. Fair condition. At station 82 was a small tunnel in about 20 feet. Coal about 4 feet. And this was driven on a slide, and the thickness of 4 feet of coal was estimated from the appearance of the bank.

Q. Is not station 82 that you are just describing on the Ludlow rather than on the Newgate claim?

Mr. GRAY. Object to the question as incompetent, improper, and leading, and improper cross-examination of his own witness.

Mr. SHERIDAN. I wish to state to the court that Mr. Kennedy in following his notes inadvertently passed onto the adjoining claim, which is a very natural thing to do, and therefore that belongs to the Ludlow rather than the Newgate.

Mr. GRAY. The notes show, and are the best evidence of where they are run, where they have been on that map.

Q. I will ask Mr. Kennedy to refer to his notes and show where station 82, just referred to by him, is.—A. Station 82 is, certainly—

that is on the Ludlow claim; I made a mistake in the claim I was working on at this time.

Q. Now, Mr. Kennedy, continue your remarks with reference to the Newgate claim.—A. On the Newgate claim at station No. 78 I found a vein of coal which measured 47 feet. Some of this, the bank at this point has slid, and I could not see how much work had been done.

Q. Were there any other stations on the Newgate claim?—A. Right on or close to the west line of the Newgate claim, at station 79. I found a vein 20 feet thick, plus slate, $1\frac{1}{2}$ feet below that, and 3 feet more of coal below that. I don't seem to have noted whether any work had been done on this or not. That is, I say, that is not plain; the banks had slid—

Mr. GRAY. Is not—A. I say, the bank had slid.

Q. Say that again.—A. That is not plain. The bank has slid.

Q. What do you mean by not plain?—A. The coal was not shown. The vein was not fully shown up. The bank had slid over.

Q. Are there any other stations on this claim?—A. That is all there was located by me.

Q. Are there any other improvements or developments of any kind on this claim?—A. There is about three-quarters of a mile of trail on this claim.

Q. Is this trail a part of the same general trail described by you to-day in your testimony?—A. I think this is a branch off of the trail previously described.

Q. Where does it lead to?—I refer to the branch?—A. It leads over to the Syndicate, the Lobster, the Octopus, the Agnes, and to the Tenino.

Q. And where does it stop on the Tenino?—A. It seems to intercept the trail previously described at the cabin on the Tenino claim.

Q. Are those all the improvements and developments that you found on this claim?—A. That was all the developments located by me.

Q. I now call your attention to the syndicate claim, otherwise described as survey No. 59, and ask you to state what improvements and developments you found on this claim?—A. I found on this claim two different exposures that I will describe, one as station 80. This was shown on the bank of a creek, and I could see $2\frac{1}{2}$ feet of coal extending up the bank in a northwesterly direction for about 40 feet.

Mr. GRAY. Where was that coal? Pardon me.—A. That was station 80.

Q. On the syndicate? Had any work been done at that point?—A. There was no indication of work having been done there.

Q. All right; go ahead.—A. This seemed to have been a point where the geological conditions changed and the vein reversed, and it seemed to me as though I made considerable examination to try and determine which way the veins would strike or dip there, but was unable to do so on account of not being able to see it on the other side of the vein.

Q. Describe any other stations that you may have set up on this entry.—A. Station 81 was a vein of coal. I could only see a part of it on account of it being covered with snow; but from the indications of the ground some work had been done on it, and it was some 25 to 30 feet in thickness.

Q. Had there been much or little work done at this point?

Mr. GRAY. I object to that question upon the ground that it is incompetent and improper, and, more than that, it is a cross-examination of the Government's own witness.

A. I would say some little work had been done; not very much, but I can't say the exact amount.

Q. Did you find any other developments or improvements on this claim?—A. There is about a half mile of trail on this claim.

Q. Is it a part of the general trail described by you in your testimony of to-day?—A. Part of that latter-described trail.

Q. You mean of the branch?—A. Of the branch.

Q. Is it the same branch trail you described a few moments ago as crossing the Syndicate, Lobster, Octopus, Agnes, and Tenino claims, and stopping at the cabin on the Tenino claim?—A. Yes, sir.

Q. I now call your attention to the Frick claim, otherwise known and described as survey No. 37, and ask you to state what developments and improvements you found on this claim?—A. I found no coal exposures on that claim. The trail runs across or through the southeast corner of it.

Q. When you say the trail, do you mean the branch trail or the main trail?—A. The branch trail.

Q. I now invite your attention to the Victor claim, otherwise described as survey No. 38, and ask you to state what developments and improvements you found on this claim?—A. I found no developments or improvements of any kind on this claim.

Q. And now with regard to the Cunningham claim. Do you make the same answer?—A. Yes, sir.

Q. When I say Cunningham claim I also mean survey No. 40.—A. Yes, sir.

Q. When you speak in your testimony, Mr. Kennedy, of prospecting tunnels, just what do you mean by that?—A. It is a mining term used for small tunnels, not a working tunnel driven in for the purpose of determining the size and condition of a vein.

Q. You have made several references to cuts and prospects during your testimony. As a mining engineer, I wish to ask you what the purpose of such developments are?

Mr. GRAY. Objected to as incompetent, irrelevant, and immaterial, and no proper foundation having been laid for such testimony.

A. Principally for the purpose of determining the size of the vein and the character and condition of the coal.

Mr. SHERIDAN. I now turn the witness over to you for cross-examination.

The COMMISSIONER. I suppose under the agreement of counsel that the cross-examination of this witness will be suspended until Monday.

Mr. SHERIDAN. Yes.

Mr. HUGHES. It will be understood that the witness, Kennedy, is now withdrawn from the stand, and that his cross-examination will be taken up by us at some future time.

Mr. SHERIDAN. Yes. I desire to call Mr. Glavis for the purpose of asking him a couple of questions.

Mr. HUGHES. Very well.

L. R. GLAVIS, a witness produced by the Government, being first duly sworn by the commissioner, testified as follows:

Direct examination by Mr. SHERIDAN:

Q. Mr. Glavis, I herewith hand you a paper and ask you to state what it is?

Mr. HUGHES. May we see it? If it is not a matter prejudicial to us, we do not want to object to it.

Mr. SHERIDAN. It may not be introduced in evidence now.

Mr. HUGHES. Will you give us some idea of its contents? It may be prejudicial to us. We do not want to delay you on our objections. If you will assure us that it is not, we will not offer any objection.

Mr. SHERIDAN. I will give you that assurance.

Mr. HUGHES. I think, for the purpose of the record, that Mr. Glavis should state his name and residence, the same as the introduction of any witness.

Q. State your name, residence, and occupation.—A. Louis R. Glavis; Portland, Oreg.; in the timber and orchard business.

Mr. HUGHES. What is the last?—A. Timber and orchard business.

Q. Are you the same Mr. Louis R. Glavis who was formerly chief of the field division, at Seattle, Wash.?—A. Yes, sir; I am.

Q. Now, I will ask you to state what the paper is which I now hand you?—A. Why, this is a letter from me to Mr. James M. Sheridan, special agent of the General Land Office, dated October 28, 1909, which is in reply to a communication I had received from him dated October 25. Do you want me to read the letter into the record?

Q. No. Are the statements therein contained the truth and the whole truth, to the best of your knowledge and belief?

Mr. HUGHES. That should be answered by yes or no.

Q. Yes or no?—A. Yes; it is.

Mr. SHERIDAN. I turn over the witness for cross-examination upon this point. I shall submit this letter to counsel for claimants, and I wish to inform the witness that I do not desire to further examine him now, although I do want him to be present next Monday for the purpose of further examination in connection with this case.

Mr. GRAY. In the meantime, you will permit us to examine the documents?

Mr. SHERIDAN. Yes.

Mr. GRAY. Very well.

Mr. SHERIDAN. That is all for the present.

(Letter marked for identification "Government Exhibit 36.")

Mr. SHERIDAN. This letter will be placed in the hands of the special commisisoner for safe-keeping.

(Recess.)

Mr. HUGHES. If the commissioner please, one of the entrymen, Dr. John G. Cunningham, is about to leave for the East and thence for Europe, to which place he sails on the *City of New York* on the 1st of December. Counsel representing the Government have expressed a desire that we place him on the witness stand so they may have the opportunity of interrogating him, and it has been agreed between us that his testimony may be taken before the commissioner at this time and be later offered in evidence in the orderly course of the introduction of proof on behalf of the claimants. We are pre-

senting him at this time. We will ask him certain questions in chief and then turn him over to counsel for the Government to examine him further, on the assurance of counsel that all papers in anywise affecting Doctor Cunningham or Doctor Cunningham's entry which the Government bases or expects to show in this case have already been introduced in evidence.

Mr. SHERIDAN. We consent to the proposal made by counsel for the claimants, with this one condition, that if in the course of this investigation any other papers concerning Dr. John G. Cunningham's entry, which is otherwise described as coal survey No. 42, should come to light we reserve the right to introduce it for such purposes as may be then stated by us.

Mr. HUGHES. That is satisfactory to us; but we then expect, of course, that if you bring to light such newly discovered evidence, paper, or document that will require explanation from Doctor Cunningham, an opportunity will be further given to us to reach him and take his deposition.

Mr. SHERIDAN. Certainly.

And thereupon the testimony of—

Dr. JOHN G. CUNNINGHAM, a witness produced on behalf of the claimants, was taken and appears in this record hereafter, in the testimony produced by claimants, at page 417 of this record.

NOVEMBER 22, 1909.—10 A. M.

Appearances: Hon. William J. McGee, United States special commissioner; Mr. James M. Sheridan and Mr. William B. Pugh, counsel for the Government; Mr. E. C. Hughes and Mr. John P. Gray, counsel for claimants.

The COMMISSIONER. Are you ready to proceed, gentlemen?

(Both counsel announced that they were ready.)

Mr. SHERIDAN. Before proceeding with the further examination of Mr. Kennedy, I wish to call attention to an error in the transcript of the record.

Mr. HUGHES. Don't you think we can get together without adding anything to this record here in court?

Mr. SHERIDAN. It is my expectation to do so, with the exception of this one instance, that is rather peculiar, and I wish to call attention to it now. I will not do so, however, hereafter. It was called to my attention yesterday by its appearance in the newspaper, and I wish to correct it at this time, with the consent of counsel, by reference to the stenographer's notes. I mean the use of the term "Plausible" objections, as it appears in the press, while the stenographer's note which he is now here ready to produce, shows that it was "forcible objections," which is the term I used, and I desire the stenographer to call the attention of counsel for claimants to that one point.

Mr. HUGHES. We have no objections to the change. We are quite willing that all objections that are made should be deemed plausible as well as forcible.

Mr. SHERIDAN. I desire to have it emphasized in this case that the term I used was "forcible" and not "plausible." Now, we are ready to proceed.

ANDREW KENNEDY, being recalled for the purpose of cross-examination by the claimants, testified as follows:

Cross-examination by Mr. GRAY:

Q. The map which you have prepared you have indicated in colors various formations which you have taken as the Tokun, the semianthracite, and semibituminous, and the Stillwater. You do not intend by the use of these colors to indicate your own views as gathered from your own examination of the extent of these various formations, do you?—A. I do not, because my examination did not quite agree with these colors.

Q. In what respect did your examination disagree with the colors as you have shown them here on this map?—A. On this lower portion, the southern portion, and part of survey 54, 57, and 58, and 61 and 69, are shown to be in Stillwater and not coal bearing. In my examination I discovered coal on them—on several of them.

Q. And you found, as a matter of fact, there was in the Kushtaka formation coal which should be so considered, did you not?—A. Well, as to the Kushtaka formation, I paid more particular attention to coal I found and where it was.

Q. You found, though, that they were coal-bearing lands, did you not?—A. I found that all of these were coal bearing, or part of them. I found enough of evidence to convince me that they were all coal bearing except, perhaps, small portions of one or two of the claims.

Q. But that a large portion of each at least of the claims was valuable coal-bearing land?—A. I found evidence enough to convince me of that.

Q. And that evidence was the actual coal cropping there, of coal crops?—A. The presence of coal, and the strike and pitch which carried it to the entries.

Q. And you also found from your examination that the outcropping of coal and the strike and dip of the veins or bodies of coal which you found showed that different of these claims included upon this map were coal-bearing lands?—A. To the best of my judgment they were.

Mr. SHERIDAN. We will state for the information of counsel, and for the purpose of having it appear upon the record, that we make no objection concerning that land not being coal land. That is, we agree that they are coal lands.

Mr. HUGHES. I understood counsel to make that suggestion earlier in the progress of this hearing.

Mr. GRAY. Yes.

Q. Now, Mr. Kennedy, when did you go upon this land which is shown upon your map?—A. In general?

Q. Yes; when did you go first upon the land?—A. The latter part of July.

Q. Could you give me the exact date?

Mr. SHERIDAN. I wish to ask counsel if there would be any objection to a reference by Mr. Kennedy to a report submitted by him on that matter which sets out the dates in succinct form, while he might have to scan his books closely to get all the dates that you want.

Mr. GRAY. I might want to look at the report or the notebooks. In that event I have no objections.

Mr. SHERIDAN. My purpose is merely to have this report to aid him, together with his notes, and therefore we submit the report.

Mr. HUGHES. I desire to say in answer to the suggestion of counsel for the Government that we shall not object to Mr. Kennedy referring to his report for the purpose of refreshing his memory, as well as to his notebooks that he made up there, if he desires to do so, but the report does not contain the dates, which was the particular subject of the inquiry just propounded.

Mr. SHERIDAN. It is not our intention to introduce this report, which is merely submitted to Mr. Kennedy for the purpose indicated by counsel for claimants [report handed to Mr. Kennedy].

Mr. GRAY. I wish you would answer the last question.

Mr. SHERIDAN. He did not answer it. Just read the question.

(Question read by the stenographer, as follows: Can you give me the exact dates?)

A. I went on the land the 25th day of July, 1909.

Q. And then what did you do on that day, Mr. Kennedy?—A. On that day I secured the services of Mr. James McGrath as a guide and the next morning we started to go over the ground.

Q. That would be the 26th?—A. That would be the 26th.

Q. And where did you go on the 26th, Mr. Kennedy?—A. On that day I visited the Candelaria claim, or No. 48—survey No. 48.

Q. What particular claims, if any, Mr. Kennedy, did you visit on that day?—A. The Carlsbad, survey No. 45, and the Deposit, survey 43. I think that was all the claims I visited on that day, but those were ones which I examined different points on.

Q. Now, on the next day—wait—first, what kind of weather did you have on that day, Mr. Kennedy, if you know?—A. Well, from the looks of my book, it was raining very hard. I did not put down anything concerning the condition of the weather on any day, but the book shows that there are some raindrops on it. It rained practically all the time I was up there.

Q. Did it rain pretty hard all the time you were up there?—A. Quite hard at times.

Q. Now, the next day, on the 27th, where did you go, Mr. Kennedy?—A. That day I visited the Collier claim, survey No. 49; Tenino, No. 51; and the Adams—No. 55, I think that is.

Q. Where had you stopped the night before, Mr. Kennedy?—A. At the Cunningham cabin.

Q. Where is that?—A. This is on the line between the Avon and the Lucky Baldwin.

Q. And where did you return that night? To the same place?—A. Yes, sir.

Q. On the 28th where did you go?

Mr. HUGHES. Is the Cunningham cabin he speaks of that mark as the Cunningham camp right on the boundary between the Lucky Baldwin and the Avon?—A. Yes; between the Lucky Baldwin and the Avon. Well, that day I went up between the lines or along the line of the Lucky Baldwin and the Avon and was on the Avon and the Deposit, or survey No. 43, and the Carlsbad, survey No. 45.

Q. That was in the southwest corner of the Carlsbad and the southwest corner of the Deposit, Mr. Kennedy?—A. Yes, sir.

Q. Did you return that night to the same cabin on the Lucky Baldwin and Avon claims?—A. I did.

Q. And the next day where did you go?—A. On that day I started work on the Agnes, or No. 47, and I went from there to the Octopus.

Mr. HUGHES. Is that on the 29th?—A. Yes. I went to the Octopus, survey No. 42; went to the Lobster, survey 41; and then to the Socorro, survey No. 44.

Q. Now, on the next day?—A. Well, then I came down along the Carlsbad, survey 45.

Mr. HUGHES. On the Carlsbad?—A. I did not locate any stations on that that day. I had done it before. I came to a point on the creek where I had intersected the work on the Carlsbad at stations 2 and 3 on a previous date.

Q. In going down to the Agnes you went down Clear Creek to its mouth and then over to Trout Creek and then upon the Agnes, and commenced your work?—A. I think so.

Q. Did you follow across the Octopus and Lobster practically along the trail that had been constructed along there?—A. No. I got off the trail in a great many places to see if we could locate any more, or any other openings than those which I had seen.

Q. And after establishing your last station on the Socorro that day, you just then returned on the trail, across the Carlsbad to the cabin, didn't you, Mr. Kennedy, without making any particular examinations on that day on the Carlsbad?—A. Yes, sir.

Q. Now, in going from the Agnes over to the Socorro, how far did you get off the trail, Mr. Kennedy, on the Octopus and the Lobster?—A. Well, the most of this prospecting seemed to have been done where they made the trails, and I can not tell how much I did go off from one time to another.

Q. And for that reason you usually followed the beaten path when you went across?—A. When I was going to make any distance I did, but I did not often seek the beaten paths.

Q. It would have been impossible for you to have covered that immense stretch of territory had you gone a very considerable distance on either side of the trail?

Mr. SHERIDAN. I object to the question as leading.

A. Well, I did not make on that trip as many miles a day as I thought I did.

Q. Answer the question. I do not think you quite understood the question. Read the question.

(Question read by the reporter.)

A. No; it would not be impossible.

Q. But you did not cover any considerable territory on either side?

Mr. SHERIDAN. I object to these conclusions by counsel. Ask the witness what he did, and let him testify to that effect.

Mr. GRAY. I will just say to counsel that I have my own way of conducting the cross-examination, and it will have to go whether it is good or bad.

Mr. SHERIDAN. That is true, but I wish to record my objection.

A. Why it looked here in one spot by the map that I covered more than a mile away from the trail.

Q. More than a mile away from the trail?—A. A half a mile.

Q. In which direction, and where?—A. Right down through the Socorro claim and there is another trail there.

Q. That is along the creek where all these stations here are?—A. Yes, sir.

Q. And also to the Octopus and Lobster claims, Mr. Kennedy?—
A. I seem to have been, by stations located there, fully a quarter of a mile away from the trail.

Q. That is at station 54?—A. Yes, sir.

Q. Can you say you were that far off the trail at any other place, and if so, where?—A. I may have been off of that trail in many places where I did not find any coal. I can not keep track of the places where I was, only by the stations recorded on the map.

Q. Now that day it was raining very hard, Mr. Kennedy?—A. Yes, sir.

Q. Who was with you on that day, Mr. Kennedy?—A. Mr.—that was on the 29th?

Q. Yes.—A. Mr. Stoner and Mr. James McGrath.

Q. What did you do, and what did they do, further than go to these places where you have marked established stations, and examining them?—A. Mr. Stoner took a cross through the corners to the points of location.

Q. Did you find all of the corners on these claims?—A. I do not think so.

Q. What corners of the Octopus claim did you find?—A. Mr. Stoner kept those notes in his book as to the corners we found and checked the courses and distances from them.

Q. As far as you know you have not any data to show what corners you found?—A. I have not any data, but I was to corners and saw the marks on them.

Q. What corners did you see them on?—A. He made the notes of the corners, as he was doing the surveying.

Q. I mean from memory, you can not testify to anything on that point?—A. Not from memory, no.

Q. You did find considerable difficulty in locating the corners, did you not, Mr. Kennedy?—A. I thought the corners were well located and easily found all over the property.

Q. Now what did you do besides finding these corners and establishing these stations and examining these points?—A. I thought that was a pretty good day.

Q. I think it was too. What was the character of that territory that you were over on that day, as to its being covered with undergrowth and brush?—A. I think that day we found snow in the brush, and along this trail in places; the strata was quite well exposed in places.

Q. And coming down across the Socorro you found a very dense brush covered the country, didn't you?—A. It was rather brushy, as I remember.

Q. And the hills rising from the creek you went down there are more or less precipitous and difficult of ascent?—A. Yes; they are.

Q. And in crossing the Socorro, you simply followed down that creek, didn't you?—A. Yes, sir.

Q. Now, you say it was pouring that day?—A. It was.

Q. Now, the next day, that is the 30th, where did you go?—A. On that day I was—

Q. Just state what you did first. You stopped at this same camp?—A. I went from the Cunningham camp.

Mr. HUGHES. May I suggest that you start on the date, and follow them clear through.

Mr. GRAY. Yes.—A. From the Cunningham camp I went along the line of the Avon, and the Lucky Baldwin, and along the creek which is on the Carlsbad.

Q. That is the same Clear Creek trail that you came back over the day before, isn't it?—A. Yes, sir.

Q. And where did you commence your observations and work on that day?—A. I commenced on the southeast corner of the Clear claim.

Mr. HUGHES. Southeast or southwest?—A. Southwest.

Q. At station 70?—A. Well, I followed up along the creek apparently to the northeast line of the claim.

Q. That is along Clear Creek there?—A. Yes, Clear Creek trail, and then up along the line of the Newgate, and the Ludlow.

Q. Along the same trail?—A. The same trail, and then I left that trail and went up over the hill. I remember very distinctly I was on no trail for the whole afternoon. I went over and located a point apparently on the line between the Syndicate and the Newgate.

Q. Station 79?—A. Station 79, and then over to nearly the center of the claim on the Syndicate claim to station 80. Then I came back.

Q. How did you come back?—A. I think I came across, and came back a different route; and I seem to remember that distinctly, that I took a distinctly different route coming back because I did not know the way I went over.

Q. Have you any notes from that trip back?—A. I have hardly any, but I remember thinking probably of the synclinal being in there, and I was trying to locate that synclinal, and then I came back and struck the trail, I believe in about the southwest or about the southeast corner of the Newgate, and went along that trail to a point near the northwest—near the northeast corner to the cabin, and remained here all night.

Q. That is what is known as the Hughes cabin, and marked "Cabin" on the Ludlow claim?—A. Marked "Cabin" on the Ludlow claim.

Q. Now, you have no notes from the time you left station 78 until you returned there except the notes made at stations 79 and 80, Mr. Kennedy?—A. No, sir.

Q. Who was with you on that day?—A. On that day Mr. McGrath and myself were alone.

Q. What did Mr. McGrath do that day?—A. He guided me to these different points.

Q. Did you locate the corners that day on this claim?—A. I did.

Q. Have you notes showing what corners you located on that day?—A. Yes, sir.

Q. What corners did you locate on that day?—A. From the Calais, the northwest corner of the Calais, we ran one north 400 feet.

Q. That would not locate any corner except what you call the Calais claim?—A. The northwest corner of the Calais claim.

Q. Did you locate any other corners?—A. The northwest corner of the Calais claim—southwest.

Q. Now, what does your notebook show of its character?—A. The compass which I had with me that day was contrary to the general

rule of compasses carried. There was a wire on the north, not the south, end of the needle, and in every instance that I ever saw one before, it was on the south end of the needle, and on this one it was on the north end.

Q. What kind of a compass did you have?—A. I had a Brunton and a Gurley compass. I had two of them.

Q. Which one was in use?—A. The Brunton.

Q. Then what corner did you say it was of the Calais claim that you located?—A. The southwest corner.

Q. That was the corner you located that day?—A. Yes, sir.

Q. Now, as a matter of fact, if your notes are correct, it was the northwest corner, wasn't it, Mr. Kennedy?—A. It was the northwest corner.

Q. But you did not make any examination of that claim on that day, did you? It was for the purpose of your examination commencing at station 70?—A. It was to locate that coal-showing.

Q. Now, what other corners did you establish that day, or did you find that day? What does your notebook show? It shows that you found the northeast corner of the Adams, don't it, Mr. Kennedy? Your notebook shows that you found the northeast corner of the Adams?—A. Yes, sir.

Q. Is that correct or not?—A. That should have been the northwest corner.

Q. Now, who found these corners? Did you or Mr. McGrath?—A. Mr. McGrath in nearly every case.

Q. He measured from those corners to the point where you fixed your station while you were making your investigations there?—A. No, sir; I can not say he did that, but he assisted some in checking me up at times.

Q. Where was Mr. Stoner that day?—A. Mr. Stoner, I believe, was making the map.

Q. He was pretty near played out, wasn't he?—A. He was.

Q. From the trip that you had taken the day before?—A. I believe he was, yes.

Q. And it rained that day, too, didn't it, Mr. Kennedy?—A. Why, I do not have any notes; I think it, perhaps, did some.

Q. Judging from the appearance of your notebook?—A. Yes; judging from that, it did rain.

Q. On the next day what did you do? Just describe where you started in, and what you did on that next day.—A. On that next day I went up on the Chezum property.

Q. That has nothing to do with this property?—A. It adjoins this property.

Mr. SHERIDAN. Do you mean on the 31st?

Q. That would be on the 31st, wouldn't it?—A. The 31st.

Q. Where is the Chezum property located with reference to this map and these claims shown on there?—A. It is on the northeast.

Q. Now, then, coming back to the matter again, when did you next go up on any of that ground? The next day? How much time did you spend up there on the Chezum ground?—A. I was on the Chezum ground at that time for one day, and I was on the opposite side of the Cunningham, and out along Canyon Creek for another day.

Q. So that there were two days you were not upon the ground shown upon this map?—A. Yes, sir.

Q. That would be the 31st of July, and the 1st of August?—A. Yes; the 1st of August I was on the ground, and came back to the cabin, I think, the first of August.

Q. At night?—A. I think so. I stayed at the cabin; stayed there until 8 or 9 o'clock one night—one evening—and came back down to the Cunningham cabin.

Q. That is the cabin on the Ludlow, or the Lucky Baldwin, or Avon?—A. I stayed on the cabin at the Ludlow one night, and left there the next night, I think, about 7 or 8 o'clock, and came down to the cabin which is called the Cunningham camp on this map.

Q. Then, on the 31st, and on the 1st, you did not put any time in on the property which is shown upon your map there, did you, or upon any of these lands now under investigation?—A. Well, sir, I did not make any—just a minute—no, sir; on August 1, I left the camp and went down to the Stillwater.

Q. On the 1st?—A. Sunday, August 1.

Q. The Stillwater. That is a stream down to the south, isn't it, Mr. Kennedy, a tributary of the Bering River?—A. Yes, sir.

Q. When did you next go upon these claims shown upon your map, and what dates?—A. On Wednesday, the 18th day of August.

Q. Now, in the meantime, had Mr. McGrath been with you on the other properties that you had visited and examined other ground?—A. No, sir.

Q. Did not accompany you over onto the Chezum ground?—A. Well, I think after I left the Cunningham claim—

Q. Well, that was not a part of these claims over on the Chezum ground?—A. I thought you asked me if he was with me after I left the Cunningham.

Q. No; he accompanied you over onto the Chezum property?—A. Yes, sir; he did.

Q. And over onto Canyon Creek, which you examined after that?—A. No, sir; he was not with me down on Canyon Creek.

Q. On the 1st of August, didn't you say you went over and examined the creek?—A. I went to Greens camp on the 1st of August, and I think I went up Canyon Creek on the 2d; I left Stillwater and went up Canyon Creek on the 2d.

Q. He was with you at that time?—A. No, sir; he came down to Stillwater with me and went back that Sunday night.

Q. And you returned to the ground shown upon your map when?—A. On Wednesday, the 18th.

Q. Of August?—A. Yes.

Q. Who was with you on that day?—A. Mr. Wingate, Mr. Langille, Mr. Stoner, and Mr. McGrath.

Q. Where did you stop that night?

Mr. HUGHES. You mean the night before.

Q. Where did you stop the night before?—A. I stopped over across Lake Kushtaka.

Q. Where did you stop on the night of the 19th of August when you returned?

Mr. HUGHES. The 18th, isn't it?

Q. Didn't you say the 19th?—A. No; on the 18th.

Q. Very well.—A. I stopped at the Cunningham camp.

Q. What time that day did you arrive at the camp?—A. I met these people down along Trout Creek; I think it was about probably on the south portion of the Adams claim, survey No. 58.

Q. What time?—A. About 8 or 9 o'clock.

Q. In the morning?—A. I have forgotten the time it was in the morning, about 8 or 9 o'clock, I think.

Q. Did you do some work that day?—A. Yes, sir.

Q. Then, just state where you went and what you did.

Mr. HUGHES. You stopped on claim 58. On this map it is 55.

A. There is a line drawn right through on this map—

Mr. SHERIDAN. The trail line as charted there makes it look almost like an 8.

Q. If you refer to that up there—

Mr. HUGHES. Where did you go?

Q. Where did you go on that day, Mr. Kennedy, and what did you do?—A. I went up along there [indicating] and took our provisions along the trail until we reached the Tenino, and until we got to the tunnel of the Tenino, and made a survey of that tunnel, made a specific examination around there, of which I had previously examined. I did not keep notes of anything but the survey of the tunnel, which I hadn't had before.

Q. And then what did you do?

Mr. HUGHES. What station would that be?—A. Sixteen, I think; 16 or 17.

Q. All right then, what did you do?—A. After completing that we went back to the Cunningham cabin, which is on a line between the Lucky Baldwin and the Avon.

Q. Did you establish or find any corners on that claim on that day?—A. I do not think so, unless Mr. Langille did.

Q. I am speaking of you.—A. I did not locate any that day.

Q. What did you do the next day, the 19th?—A. The next day we left the cabin and went up a creek on the Lucky Baldwin.

Q. Just state in what direction.—A. In an easterly direction, and followed along in an easterly direction partly across the lines, and then went in a northeasterly direction toward and on to the Bedford, and continued that northeasterly direction to the Boston.

Q. Just indicate along there what stations you passed.

Mr. HUGHES. So that I can follow you. This is on the 19th of August. Will you indicate what stations you passed, as shown on this map on that day, and then I can follow you?—A. Well, beginning at station 270 on the Lucky Baldwin, I went along to different stations, 275 on the Lyons, and over to 278 and 279 and 280, and 281 on the Bedford, and then up to 283 and 284 on the Boston, and then up to 285 and 286 on the Tulare.

Mr. HUGHES. And followed practically along the line of the contour?—A. I would say yes, Mr. Hughes.

Mr. HUGHES. Followed along the line of the contour?—A. No, sir; irregularly all around that country, and then to stations 287, 288, 289, 290, 291, and 292 on the Tulare, and then about due north to 293 on the Plutocrat. I came from there down, and struck the trail, I think not far from the cabin on the Ludlow, and from there direct into the cabin, which is the cabin marked Cunningham camp.

Q. Mr. Kennedy, who was with you that day?—A. Mr. Wingate, Mr. Langille, Mr. S. N. Stoner, and James McGrath.

Q. Did you find any of the corners on any of these claims on that day?—A. I remember being right at one corner. I was at the north-east corner of the Bedford claim.

Q. Did you go to any other corners on that day?—A. On that day Mr.—

Q. No; I am asking you what you did?—A. I don't remember of going to any other corners. I remember I located the work from the U. S. L. M. station.

Q. Did you, Mr. Kennedy, examine each of these stations and the coal exposures at each of the stations which you have marked upon that route you took that day?—A. I examined all of them, if I remember right, except the one, I think, I said that I looked at from a distance. On this string in the canyon it was so abrupt that we could not get down.

Q. What is it that you refer to?—A. I think on the Tulare, stations 287, 288, 289, 290, and 291, I did not get down to the lower ones. We were at the upper one or two.

Q. As a matter of fact, the country breaks very abruptly, and to the east down on Canyon Creek along the west line of the Boston, and the Tulare claims, doesn't it, and it is almost impossible to get down on the Canyon Creek slope of these claims?—A. I do not recall that it is just on these claims, but that is the condition along several of them; yes.

Q. And it is impossible, and it was impossible, to examine a large part of these claims because of the fact that they were on the Canyon Creek slope of the mountain?

Mr. SHERIDAN. I object to the form of the question. Ask the witness what he knows about the situation.

Mr. HUGHES. That is perfectly proper cross-examination; this is not direct-examination.

The COMMISSIONER. Answer the question.

A. There is a very deep and steep canyon there, and the hill is very abrupt on the east side of part of these claims.

Q. Now, in starting in at the Cunningham camp that morning, what you call the Cunningham camp, the cabin on the Lucky Baldwin claim, you started at an elevation of about what, Mr. Kennedy?—A. Well, at 270, I show an elevation of 570 feet.

Q. No, no; at the cabin where you commenced your day's journey?—A. I think that elevation is about 150 or 200 feet. I don't remember exactly.

Q. And you climbed up to an elevation of over 2,200 feet, did you not?—A. Yes, sir; it was a good elevation there.

Q. Well, can't you tell from the maps?—A. I would have to go all over the notes to state—

Q. All right; then, where did you go that day?—A. (Continuing.) What height I did go.

Q. I wish you would find out, if you can?—A. We went approximately to an elevation of 2,000 feet.

Q. You went to an elevation of 2,250 feet, did you not, Mr. Kennedy, and you arrived at station—A. I find elevations here of 2,000 feet.

Q. Now, Mr. Kennedy, when you arrived at station 281 you had reached an elevation of approximately 1,750 feet, hadn't you?—A. My aneroid showed 2,200 feet at that point.

Q. At station 281?—A. 281.

Q. 2,200 feet, and then you descended, didn't you?—A. I think we followed the ridge along pretty well.

Q. And came to an elevation at station 283 of, approximately, 1,900 feet, didn't you, or 2,000 feet?—A. My notes show 1,920 feet at station 283.

Q. And your elevation, as you determined at that time, at stations 281 and 283 were approximately the same—283 being some 80 feet below 281—282—I mean—I will withdraw that question. I see I am in error. You then descended, Mr. Kennedy, until you came to 286. What was the elevation at 286?—A. I don't seem to have any elevation at 286.

Q. But from the contours upon your map, if they are correct, that is at an elevation of about 1,700 feet, isn't it?—A. Yes, sir.

Q. And you then again raised to what elevation at station 291?—A. 291 was down, that was one that we did not go to.

Q. Oh, you did not go there?—A. No.

Q. Did you go and visit any of those stations from 287 to 291?—A. 287 we were.

Q. What elevation did you have there?—A. An elevation of 2,100 feet.

Q. And you then continued to rise to station 292; what was your elevation there?—A. 2,080 feet.

Q. Now, the route that you took on that day was a very rough and difficult one to cover, wasn't it, Mr. Kennedy?—A. Well, it was all rough. I did not see very many pleasant routes to take up there.

Q. Well, that was particularly so—that was a particularly hard trip?—A. Why, it was a hard trip, yes.

Q. And a great deal of underbrush?—A. No; we took pretty well up the creek until we got out of the timber line.

Q. Following the route up the center of the creek, wading a large part of the way?—A. I think we did. There was very little trail.

Q. And climbing over the rocks and falls of the creek?—A. I don't note those kind of things, but I think we did.

Mr. SHERIDAN. I submit Mr. Gray is testifying of his own personal knowledge. He should ask the witness whether there are any rocks or not.

Mr. GRAY. If counsel was quite familiar with the rules of cross-examination he would know that leading questions are entirely proper at that time.

Mr. SHERIDAN. If you want to testify, Mr. Gray, I suggest that you be sworn and take the witness stand.

Mr. HUGHES. I would like to recommend that the observations made by the commissioner at the beginning may be enforced throughout this hearing. We will save record and time.

The COMMISSIONER. There has been no change in the observations I made at the beginning of these proceedings. All remarks of counsel will be noted of record.

Q. Now, what was the condition of the weather on that day, Mr. Kennedy?—A. Well, I don't know. I don't seem to have noted the condition of the weather.

Q. Raining, though, I suppose, as usual?—A. Well, there were very few days that it did not.

Q. Found some snow up there, Mr. Kennedy?—A. Why, I think we did.

Q. How did you determine, except from the corner of the Bedford claim, which you refer to, and the U. S. L. monument, which you have also referred to, where you were, and how did you establish your stations with reference to the corners or lines of the claim?—A. Mr. Stoner and Mr. Langille did the locating of the points that day.

Q. As far as you know, they may not be exactly accurate, or accurate at all?—A. Why, I looked over these things from the U. S. L. monument on this corner that we found and I would say they are approximately correct. I would not say they are positive to a few feet.

Q. On the course that you followed, that monument and corner would be over a mile apart, wouldn't they?—A. I think they run from other corners.

Q. Well, I am asking you if that is not true?—A. I think it is.

Q. You yourself did not determine where any corners were?—A. That one corner I saw personally.

Q. You saw the monument?—A. Yes.

Q. But you did not see any other corners?—A. They were doing the locating. I did not see any.

Q. And in going up and along the Boston claim you went very nearly along the west line of the claim, didn't you?—A. I really could not say that; there was no—

Q. Not sufficiently familiar with where the line was to say definitely?—A. No.

Q. You did not make any examination from Canyon Creek in a westerly direction over the surface of the Boston or the Tulare claims, did you, Mr. Kennedy?—A. I could not say I was on the claims. I made several observations along that creek as I went up there, to determine the regularity of the strata of the rock and veins therein, and also on the other side of the creek.

Q. Now, what were you doing on the 20th? You said that you returned to the cabin on the Lucky Baldwin and Avon on the night of the 19th.—A. Yes. I went that day to stations 294, 295, and 296—if you can help me find them on there.

The COMMISSIONER. What day is that?—A. The 20th. It is approximately in the southwest corner of the Ludlow.

Q. You went from the cabin on the Lucky Baldwin and Avon up along Clear Creek trail, and made examination near the southwest corner of the Ludlow, did you, Mr. Kennedy?—A. I was there another day, and there were several stations which were all lower down than that.

Q. You did not, as a matter of fact, show upon your map, show these stations, because you say you visited that place at some previous time?—A. No; I think I did note that station on there. I can tell what I done there; here, that point was my first station, 77, and it appears on my notebook on the second trip as station 294; and it is on the map.

Q. What were you doing there that day?—A. We examined the tunnel which was driven in there.

Q. Who was with you?—A. Mr. Wingate, Mr. Langille, and Mr. Stoner, and Mr. McGrath.

Q. Did you survey that tunnel that day, Mr. Kennedy?—A. Yes, sir.

Q. What else did you do that day?—A. Came back along the trail.

Q. The same Clear Creek trail?—A. The same Clear Creek trail; and apparently went to stations 295 and 296.

Q. Where are they?—A. On the other entries in the same neighborhood.

Q. Not shown by these numbers upon the map?—A. I think they are in that same neighborhood. I don't seem to be able to find them.

Q. On what claims?—A. In the neighborhood of the Ludlow.

Q. That is near the southwest corner of the Ludlow?—A. Yes.

Q. Or the southeast corner of the Newgate?—A. Yes, sir.

Q. What did you do there, Mr. Kennedy?—A. My notes show that at 295 I found a vein of coal 10 feet thick.

Q. Did you do any more than examine them?—A. I think not. Did I say that was 294?

Q. 295, you said?—A. 296; and also found coal 10 feet plus.

Q. And you are not able to definitely locate either of those stations upon the map?—A. I don't seem to be able to find them there.

Q. Did you do anything more than examine those two stations, 295 and 296?—A. I think we went back, then, after that.

Q. I don't want what you think; unless you can testify from your notes or from your memory.—A. Why, we went back to the Cunningham camp.

Q. By that you mean the cabin on the line of the Lucky Baldwin claim?—A. Yes.

Q. Now, it was raining that day, I suppose, too, Mr. Kennedy?—A. Well, I have not made any notes as to the days it was raining.

Q. What was the next day?—A. I left there and went over to the point known as the "English Company's camp."

Q. Did you return again to this territory shown upon the map that is presented to make any further examination?—A. Not on this individual property, but previous to that I had examined a lot of work concerning it on the Canyon Creek side between the dates of August 2 and August 20.

Q. On which side was that?—A. That would be on the east side of the property.

Q. Across Canyon Creek?—A. Across Canyon Creek.

Q. A mile or more distant easterly from the ground which you show upon your map?—A. No, I think I examined some property half a mile from there; and then at that point the canyon is probably half a mile wide.

Q. And that represents the examination you made upon the ground?—A. On the ground; but from and around the other hills I took the strike.

Q. I mean so far as it relates to these claims?—A. Well, it relates to them; the examination I made on the other ground by taking the strike and dip of the veins which I found on adjoining land which I expected would lead onto the claims finally.

Q. That is, from the examination of that adjoining other ground you speak of, you determined these coal veins you found there, because of their dip and strike and the character and formation of the country, would dip beneath and extend into and beneath and under

these claims concerning which you have testified?—A. Portions of them.

Q. Yes. Now, what was the general course—well, which portion—

Mr. HUGHES. This refers to the examination you made on the east side of Canyon Creek?—A. Sir?

Q. I say that refers to the examination you made on the east side of Canyon Creek, a portion of the veins discovered, their dip, and nature?—A. The strike seems to carry across over the ridge on the Canyon Creek side into this property.

Q. Into what claims? What I was asking—pardon me for breaking in; I don't want to prolong this examination—is, which of the claims on this map would have, according to your observation, the veins you discovered on the east side of Canyon Creek extending under them?—A. Well, now, I could not enumerate the exact veins. While over on the Canyon Creek side I could see part of this property, and by taking their strike I saw they would reach this property, but I did not know or could not tell just which claims they would hit on the opposite side. In general, they ran from this property [indicating] over to this property.

Q. What was the general course or strike of the veins?—A. Why, the approximate strike ran from north 40 to 60 east, and southwest.

Q. And the dip?—A. And the dip was approximately north 40 west.

Q. What is the general character of the surface of the land within these various claims, the 33 claims which you have testified concerning?—A. The general character?

Q. Yes, of the surface?—A. Why, it is rolling and irregular. It is rolling land.

Q. Quite broken, isn't it, quite cut by numerous canyons and ravines?—A. Yes, by two principal ones.

Q. And along which numerous measures of coal has been exposed?—A. Yes, sir.

Q. Now, Mr. Kennedy, in your examination, you have spoken of many places where the walls have slid into the openings that were originally made upon the coal. What reason were there for these walls sliding in; what was the cause of that?—A. Why, there the excavation was made, it was not sloped enough, and not necessarily to the slope; and the banks above have slid in by the softening of the earth.

Q. Due to extensive rainfall, and a great fall of snow in that country, isn't it?—A. I would say so.

Q. And the melting of the snow?—A. Yes, sir.

Q. It would be very difficult to keep an opening of that kind open year after year without practically performing the work over again each year?—A. Yes, it would.

Q. The surface of these hills is covered with considerable soil, I would say, and vegetable matter, aren't they?—A. Yes, sir.

Q. And that is what has slid into these openings that originally existed there?—A. Yes.

Q. You, of course, have not testified that you examined every opening on this entire group of claims, Mr. Kennedy?—A. I made an effort to find them; there might have been some there I didn't see.

Q. But you don't want to be understood as seeing them all?—A. I visited all that I knew of.

Q. Now, Mr. Kennedy, in the report which was prepared by the geological department survey by Mr. Martin he estimated the annual rainfall in the neighborhood as in excess of 150 inches. From your visit to that country, and your acquaintance with it, would you say that that amount is a conservative estimate?—A. I did not make any notes of that at all. I know it was raining enough and plenty to suit me, but I did not make any estimate as to the amount which fell.

Q. There is a very great rainfall, then, in that country, is there not?—A. There was during my time.

Q. And from the observations you were able to make, you can say there is a great annual rainfall?—A. I should think so, yes.

(Recess taken to 2 p. m.)

AFTER RECESS.

NOVEMBER 22, 1909—2 p. m.

Appearances: Hon. William J. McGee, United States Special Commissioner; Mr. James H. Sheridan and Mr. William B. Pugh, counsel for the Government; Mr. E. C. Hughes and Mr. John P. Gray, counsel for claimants.

ANDREW KENNEDY on the stand.

Cross-examination by Mr. GRAY:

Q. In answer to my questions, you had given each day the work you did and what you did and where you went. That comprises the work which you did, without asking you further as to any specific matter—that comprises the work you did up there while investigating this property which you have shown on your map; am I correct?—A. I made a further study of it by plotting this after I came back.

Q. I mean upon the ground?—A. Yes.

Q. That is all you did upon the ground?—A. Yes, sir.

Q. How many days that you were actually engaged on the ground was Mr. Stoner out with you on the ground?—A. I would have to go all over these notes to give the exact number of days he was with me on the ground.

Q. You have mentioned in answer to my specific questions as to each day you gave that they were with you, and each day as you took it from your notes?—A. Yes, sir.

Q. Now, Mr. Kennedy, you went up there—you said you went up there under instructions from Mr. Glavis?—A. Yes, sir.

Q. Who was at that time chief of field division?—A. Yes, sir.

Q. Were those instructions in writing?—A. Well, now, I don't positively remember. They usually are.

Q. Well, I want you to give me your best recollection of this matter. Have you any of your papers in connection with the matter here?—A. No, sir; that is usually in the form of a letter.

Q. Well, did he give you a letter at the time that you went up there?—A. I rather think he did, but I would not be clear on that.

Q. Well, if he did, where is that letter now?

Mr. HUGHES. It should be in the government files, it seems to me.

Mr. SHERIDAN. I will state I do not recall any letters of instruction to Mr. Kennedy, because when I came out here and took charge of this matter Mr. Kennedy was already in Alaska. Now, if there was any letter Mr. Kennedy should have a recollection of it, and probably it can be found in the files of the letters. I will inquire about it and if so I will be glad to furnish it to you.

Q. Now, while we are waiting for that I will ask you one or two other questions. Mr. Kennedy, I wish you would again describe that tunnel that you found on the Tenino claim at station 18, I think—no; 16—at station 16?—A. That is, as to the distance it was driven?

Q. Yes; just describe the tunnel. What kind of a tunnel it was and all about it.—A. It was a tunnel driven in a southwesterly direction.

Q. Just go ahead from your notes and just describe the tunnel.—A. It was driven in a westerly direction 235 feet, with branches off of it. One branch 208 feet; one 84 feet; one 63 feet, and other short branches.

Q. Evidently driven for the purpose of prospecting that seam of coal, wasn't it, Mr. Kennedy?—A. It appeared to me that way.

Q. In your examination, Mr. Kennedy, on Saturday you spoke of the elevations of the Tenino claim and of the highest point, approximately, on the Rutland claim. In giving those, you took it from the contour map, did you not?—A. I rather think I did.

Q. And they were only intended as approximate elevations, as you gathered them from the contour?—A. Yes; and I want to say, these locations on these claims are also approximate and not an absolute certainty.

Mr. SHERIDAN. I find that there is a letter giving instructions to Mr. Kennedy concerning this group of what is known as the Cunningham group, and also including a large number of other matters not at all here pertinent to these issues, and concerning other investigations, and with other instructions, which under the law and under the department regulations we are not permitted to divulge the contents of the letters.

Mr. HUGHES. Can we have a copy of it made?

Mr. SHERIDAN. There is no particular part of it which specifically refers to this group in such a way that we could separate it from the other matters which are contained in this letter, and which are confidential under the rules of the department until the reports are made on them, and therefore I am not at liberty to give it to you.

Mr. HUGHES. Will you give it to Mr. Kennedy, so he can identify it as being a copy of the instructions he received?

Mr. PUGH. What would be the purpose of the identification?

Mr. GRAY. Mr. Kennedy was not sure he received written instructions and I want to have him state that.

Mr. PUGH. He testified that his instructions are in writing.

Mr. HUGHES. We will consent to have you submit it to him without any infraction of the rules of the department on your part. All we would like is to have the witness answer so he can say specifically whether he had written instructions or not.

(Copy of letter was thereupon handed to the witness by Mr. Sheridan.)

A. This is the letter addressed to me and, I believe, the instructions given to me when I went to Alaska.

Q. (By Mr. GRAY.) This is the letter which you just had in your possession, which counsel for the Government now presented to you, and is a copy of the letter of instructions which you received at that time from Mr. Glavis?—A. It is.

Q. And you do not know where the original of that is, Mr. Kennedy?—A. Why, I do not know. We have been crowded up in the office very much, and I may have taken it to Alaska with me, which I likely did.

Q. Did you bring it back?—A. I could not tell that, because we have not any files in the office where we can keep anything; they are thrown in the drawers there and we can not keep track of our papers. The Government has no files.

Mr. GRAY. We are not disposed to place counsel for the Government in any position in any way violating any rules of the department, or the witness either, but—

Q. I will now ask you, Mr. Kennedy, if after having examined that letter of instructions—if you, in your work in Alaska, did all the things which you were directed to do by that letter of instructions, so far as relating to the claims which are involved in this hearing?—A. I rather think I did.

Q. We now ask you, Mr. Kennedy, after having refreshed your memory with that copy of the letter of instructions, whether you were directed and referred only to the claims involved in this hearing—whether you were instructed to do more than ascertain whether the lands within the several entries were coal lands in character?—A. I was also instructed to ascertain, if I could, the amount of work done on the property in a general way.

The COMMISSIONER. Is that all of the cross-examination, Mr. Gray?

Mr. GRAY. That is all; yes.

Redirect examination by Mr. SHERIDAN:

Q. Mr. Kennedy, in describing the examinations that you made of the entries included in this group now under investigation, do you wish to convey the impression that you pursued the lines indicated by you on your direct and cross-examinations along the trails to the stations set out on your map without spreading away from these stations generally on each entry?

Mr. HUGHES. Object to the question as leading, suggestive, and argumentative.

A. Why, I know that in several instances we got away from the trail entirely because there was no trail to a number of these openings that we located.

Q. Did you or did you not make it your purpose to look over the area of each entry generally with a view of ascertaining the developments thereon?

Mr. HUGHES. Objected to as incompetent and immaterial; the material question being what he did and not what his purpose was.

A. Where I could find any improvements had been made I made an effort to see those and learn what they were; and also any improvements or prospects.

Q. Did you examine each individual entry for the purpose of discovering these prospects?—A. Yes, sir.

Q. Or did you obtain information from somebody else concerning the prospects on each entry?

Mr. HUGHES. I object to that as assuming in this examination that the witness has distinctly testified that he did not make, in referring to all the entries, as the question does; and further as incompetent and immaterial as far as it seeks to elicit information received from a third person.

A. I obtained the information from different parties by inquiry that prospects—

Mr. HUGHES. Wait one minute. That part of the question is answered, and we object to the witness going any further and giving information that he received from third persons for the reason it would be hearsay and therefore incompetent.

Mr. SHERIDAN. Read the first part again.

Mr. HUGHES. I would like to suggest that it is within the power of the commissioner to exclude evidence that is hearsay, because by no rule could it be considered by the department authorities. We think it is entirely within his power.

Mr. SHERIDAN. We contend that it is not within the power of the commissioner to exclude anything in this inquiry, save what is obviously irrelevant, and we deny that this is obviously irrelevant. Just read the last remark of Mr. Kennedy.

(Record read.)

Mr. HUGHES. The objection is it is incompetent, and so manifestly so that the record could not be regarded, as the answer shows.

The COMMISSIONER. The witness should testify from his own knowledge, and obviously what others have told him would be hearsay. He was basing this examination on his own knowledge, or statements of his examination based on his own knowledge.

A. Why, I think if I could add there what it was there would be no argument, because I don't intend to put anything in he told me at all, only it was on the claims, and then I went to them. I am not going to say anything he told me about them at all—only what I saw myself.

Mr. SHERIDAN. Before leaving this point I wish to invite the attention of both counsel for the claimants and the honorable commissioner to the latter part of rule 41, which reads:

Officers taking testimony will, however, summarily put a stop to obviously irrelevant questioning.

And I hold, no matter what the answer of the witness may be to the question propounded, if it was in any way an intelligent answer, it would not be obviously irrelevant.

The COMMISSIONER. I think it is hearsay testimony.

Mr. SHERIDAN. I do not construe that regulation to mean that the special commissioner now presiding has authority to pass upon what is relevant or irrelevant, competent or incompetent testimony, except where it becomes obviously irrelevant, and that requires a very plain case.

Mr. HUGHES. The point we make, Mr. Commissioner, is that all the hearsay testimony must, of necessity, be obviously irrelevant to the determining of any issue by the department.

The COMMISSIONER. It strikes me so, Mr. Hughes, and that has been my view of it. It could not have any bearing in the case at all

if it was hearsay evidence, and I think that is within the province of the commissioner to pass upon. Mr. Kennedy can state what he knows of his own knowledge from his investigation and examination.

Mr. SHERIDAN. I think we have a right to bring out the point whether or not Mr. Kennedy is testifying of his own knowledge or by hearsay. That was the purpose of the question, and that question may be answered by Mr. Kennedy.

Mr. HUGHES. I think, Mr. Commissioner, that might be quite pertinent in cross-examination for him to say he was or was not testifying of his own personal knowledge, but I am unable—

For the purpose of showing the testimony he has given, that the testimony as given was incompetent and irrelevant, but I am unable to see how the Government can seek to pass or to show the competency or materiality of testimony given by their own witness inasmuch as it definitely appears to be incompetent, or hearsay, which is apparent on its face.

The COMMISSIONER. From what he claimed he was about to say he would testify from his own knowledge, he may answer in that language.

Mr. SHERIDAN. The purpose of the question was exactly as indicated, to emphasize the fact that he is testifying of his own knowledge, and to remove the vague idea that seemed to run along through the whole of his testimony given on cross-examination that he was relying on someone else, and not on himself.

Mr. HUGHES. Oh, yes.

Q. Now, I will ask you, Mr. Kennedy, if you relied on your own observation on each and every entry for the description of the condition of the development you found there?—A. I did. I did not attempt to say what the others told me about it. I would like to add there that at each of these places I made inquiries, but I did not give it as evidence.

Q. You referred to Mr. Langille who was one of the parties who was with you at the time you made part of this examination concerning which you are testifying; what are his initials, and who is he?—A. His initials are W. A. Langille, and he is a forest supervisor in Alaska.

Q. Now, Mr. Kennedy, based upon all of this experience as you have had as a coal mining engineer, and upon the position of the tunnels which you saw on these entries, I wish to ask you if these tunnels were, in your opinion, so placed that their purpose would be to develop an individual entry upon which the tunnel appeared, or to develop more entries than that individual entry?

Mr. HUGHES. I object to the question as incompetent, irrelevant, and immaterial to this inquiry; and I also object to it on the ground that the question calls for an answer which, if material at all, is to be determined by the tribunal deciding this case, and not by the witness; and that no proper foundation has been laid to propound any such question and receive his answer thereto.

Mr. SHERIDAN. Read the question.

(Question read by the stenographer.)

A. From the appearances I would say they were located and intended to work more than one entry.

Mr. SHERIDAN. That is all.

Recross-examination by Mr. GRAY:

Q. You testified concerning the Tenino claim, on my cross-examination, of a narrow tunnel. What other tunnels did you refer to in the answer which you just gave counsel?—A. There are several tunnels right at that point, or near the point which I described, on the Tenino claim, and three of these could be used.

Q. How large were they?—A. I think I described them. They ran about $4\frac{1}{2}$ feet on the bottom, and $3\frac{1}{2}$ on top, and about 5 feet in height.

Q. Now, based upon your experience, were not these tunnels, in your opinion, put in there for mere prospecting purposes?—A. There is not a working-sized tunnel that I saw on the property.

Q. There is not?—A. Oh, they could be used to take some coal out, and coal has been taken out.

Q. But not for commercial purposes; mere prospecting purposes, weren't they?—A. I think so.

Q. Now, what other tunnels were there on the Tenino besides that you refer to?—A. They were all of that same description.

Redirect examination by Mr. SHERIDAN:

Q. I call you attention to the tunnel at station 16, on the Tenino claim, and ask you if, in your opinion, that is a prospect tunnel.

Mr. HUGHES. Objected to for all the reasons heretofore urged to the last question, and as attempting to cross-examine his own witness, and as leading.

A. There has been a lot more work done on that than is usually done on a prospect, but it is not a working-sized tunnel, in my opinion. It could be easily enlarged to a working-sized tunnel.

Q. Is the position in which it is located such, in your opinion, as a mining engineer, as would properly be made for the taking of coal on entries ahead of it in the direction in which it drifts?

Mr. HUGHES. Same objection.

A. Its location is a good point for mining some coal just to the west of it, or ahead of it.

Q. On other entries?—A. On other entries.

Mr. GRAY. The several branches from it are evidently driven for the purposes of prospecting?—A. For the testing of coal.

Mr. SHERIDAN. We now offer in evidence Government Exhibit No. 37, which is a map bearing the legend, "Map of Behring River, Alaska, showing the location of certain coal claims and proposed railroad. Compiled from the records of the General Land Office and Geological Survey. Compiled by F. N. Stoner, under direction of A. Kennedy. October, 1909." The purpose of this map is merely to show a bird's-eye view of the group of entries now under inquiry, and proposed railway connections with this group.

Mr. HUGHES. May I inquire of counsel if it is also the purpose to show the Government's willingness to aid in the construction of these several lines of proposed railroad?

Mr. SHERIDAN. No.

Mr. HUGHES. And furnishing facilities for transportation?

Mr. SHERIDAN. No. No such inference is to be drawn to that effect.

Mr. HUGHES. The defendants object to this exhibit for the reason that no proper foundation has been laid for its introduction, it is not properly authenticated, and does not appear to be any competent

testimony; that it speaks no value, and also it is irrelevant and immaterial.

The COMMISSIONER. It may be received in evidence and marked as Government Exhibit No. 37.

(Paper marked Government Exhibit 37 admitted in evidence.)

Mr. SHERIDAN. In reference to this Exhibit No. 36, being a letter from L. R. Glavis, dated White Salmon, Wash., October 28, 1909, to J. M. Sheridan, special agent, General Land Office, which is already submitted to counsel for claimants for their inspection, and concerning which Mr. Glavis has already testified on the stand, we wish to state that, in view of the statement made by Mr. Glavis in this letter, that the record in our possession will disclose all the information upon which he can testify; it will not be necessary to call him now; it may become necessary later, at which time we will do so.

We now wish to call Mr. William A. Langille, of the forest department, as a witness.

WILLIAM A. LANGILLE, a witness produced by the Government, being first duly sworn by the commissioner, testified as follows:

Direct examination by Mr. SHERIDAN:

Q. State your name, residence, and occupation.—A. William A. Langille; Ketchikan, Alaska; forest supervisor.

Q. Mr. Langille, have you, at any time during your service in connection with the Forestry Service, been called upon to make an examination of what is known as the Cunningham group of coal entries in Alaska?—A. Yes, sir.

Q. State how you came to make this examination and the nature of the examination.—A. It was at the request of the district forester in charge of District 6 at Portland, Oreg.

Q. Did you have any instructions from the district forester as to what the scope of your examination was to be?—A. Yes, sir.

Q. State briefly what the nature of your instructions were.

Mr. HUGHES. May I ask first whether they were written or oral?

Q. You may state whether they were written or oral.—A. There was no letter written directly to me. The instructions were in a letter written to Mr. Ames.

Mr. HUGHES. Which was read to you?—A. Yes, sir.

Mr. HUGHES. And which you received as your instructions?—A. I accepted those as my instructions. It just mentioned my name in them, and I was to accompany Mr. Ames to make the examination.

Mr. HUGHES. This letter would be the best evidence.

Q. Now, just state briefly what the nature of the instructions you had were.

Mr. HUGHES. Just a minute; we object, as it appears from the answer already given by the witness, that the letter containing his instructions, by reason of which he acted, was an instruction in writing of his duties, and his oral statement would be but secondary evidence of the contents of that letter, and hence not competent.

Mr. SHERIDAN. Read the question.

(Question read by the stenographer.)

A. We were to go and examine the Cunningham group of claims to ascertain the amount of work that had been done and the amount of timber that was on the claims.

Q. Mr. Langille, are you a surveyor or an engineer?—A. No, sir; not technically.

Q. Have you had any experience in connection with surveying or engineering?—A. Yes; I have done some surveying.

Q. State briefly what the scope of your experience along those lines has been.—A. Well, most of it has been in the Forest Service work, surveying and running lines on claims and making original surveys.

Q. While doing such work have you been called upon to handle surveying instruments yourself?—A. Yes; I have.

Q. What instruments are you familiar with?—A. The compass and chain.

Q. So that your experience in this connection is that of some practical experience which you have had?—A. Yes, sir.

Q. Did you go to Alaska in accordance with these instructions and make such examination?—A. Yes, sir.

Q. Were there any other persons with you at the time you made this examination?—A. Yes, sir.

Q. Who were they?—A. Mr. James McGrath and Mr. G. Wingate.

Q. Were there any others?—A. On one day Mr. Ames accompanied us, and on two days Mr. Stoner and Mr. Kennedy were with us.

Q. When you refer to Mr. Stoner do you mean Mr. Stoner of the General Land Office?—A. Yes, sir.

Q. Special agent?—A. Special Agent Stoner.

Q. When you refer to Mr. Kennedy do you mean Mr. Andrew Kennedy?—A. Yes, sir.

Q. Coal-mining engineer of the General Land Office?—A. Yes, sir.

Q. What was the nature of the assistance which you gave to these other gentlemen while making this examination?—A. Well, we were on Trout Creek and took the bearings of the tunnels. I did some of the compass work and some of the traverse work.

Q. Mr. Langille, I now call your attention to Government Exhibit 35 and ask you to indicate on this exhibit the claims that you visited on that occasion of the examination which you made of this group.

Mr. HUGHES. Now I desire to object. We desire to introduce at this point the same objection against the testimony of this witness being received on this question that was urged against the testimony of Mr. Kennedy, without cumbering the record by fully repeating those objections. If it may be understood that the objections are made—are the same as those made to the testimony of Mr. Kennedy on his examination.

Mr. SHERIDAN. Will you specify that objection just now for the purpose of having it understood definitely?

Mr. HUGHES. We object to the introduction of any testimony by this witness bearing upon the openings or improvements of the mines upon the entries in question, or upon the character of the lands as coal lands for the reason it is irrelevant, immaterial, and for the further reason that the department has passed upon the questions here involved at the time when it permitted these locations and their filing, and at the time when it accepted the money on the entries and issued final receipts and certificates for patents, and it can not now adopt any other or different construction than that then adopted,

because it is not authorized to cancel any entry without returning the money, excepting for fraud, which is not charged in these respects, and except where the lands are of a class not embraced within the right to enter, all of the class of which entries were made; and we further object on the ground that the testimony is incompetent.

Mr. SHERIDAN. We wish to state that it is not our purpose to have Mr. Langille testify to anything other than his knowledge of the facts that he saw on the ground, and that is intended to be confined to the extent of the cuts or tunnels that he may have seen on the part of the ground which he saw. We do not say that he is, nor does Mr. Langille say that he is qualified to pass upon the coal character of this land.

Q. Mr. Langille, I now direct your attention to Government Exhibit 35, and ask you to point out and call by name the respective entries upon which you were during this examination, and whether or not you saw, with your own eyes, any cuts or tunnels on any of these entries?—A. Yes, sir.

Mr. HUGHES. We now renew the objection heretofore made, but understand that it will be accepted and extend to all the testimony of this witness on this subject. We, at this time, interpose an objection to the witness referring to this map for any other purpose than merely matters of illustration.

Mr. SHERIDAN. That is the only purpose for which I invite his attention to the map.

Q. Also, Mr. Langille, when you commence and take up one particular entry, you may consult your field notes for the purpose of showing whatever you found thereon as to cuts or tunnels or improvements. Before answering this question, Mr. Langille, I wish to ask you if, while on the ground in Alaska, and by that I mean upon the entries now under inquiry, you made any notes of your observations?—A. Yes, sir.

Q. Have you those notes with you?—A. Yes, sir.

Q. You may refer to them for the purpose of refreshing your memory in this connection.—A. On August 18 I was with Mr. Stoner, Mr. Kennedy, Mr. Wingate, and Mr. McGrath on the Tenino claim; and we found a tunnel on the right bank of Trout Creek at an elevation of 440 feet; a tunnel 4 feet wide on top, $4\frac{1}{2}$ feet on the bottom and 7 feet high; and right—and there are two tunnels make—have one entrance. The main entrance was 9 by 7 feet. Seven feet on top and 9 feet on the bottom. The course of the left hand tunnel was south 52 west $37\frac{1}{2}$ feet. This one was 6 feet on the bottom, 5 feet on the top, and 7 feet high. And the long tunnel, the right branch of it, the course was south 85° west and the length of that I have not got. I took the course and the others measured the distance. That is taking the magnetic variation of $29\frac{1}{2}$, which was as near as we could adjust it on the small compass. From this large tunnel we ran a traverse north 40° west approximately 750 feet, north 35° east approximately 450 feet to the house that is located on Trout Creek which was used as a camp while they were working there.

Mr. HUGHES. Marked on the map with the word "cabin?"—A. Yes, sir.

Mr. GRAY. What was that course from the mouth of the tunnel?—A. North 40° west approximately 750 feet. North 35° approxi-

mately 450 feet; and on the left bank of Trout Creek, south 35° west 750 feet from the cabin there is a tunnel, length 35 feet, 4½ feet wide on the bottom, 4 feet wide on top, and 6 feet high, and it was timbered at the entrance.

Mr. HUGHES. When you refer to the left bank of the creek you mean descending the stream?—A. Yes; looking down the stream.

Q. Was this also on the 18th?—A. Yes; this was on the 18th. North 60° east was a large tunnel situated on the right bank of Trout Creek. The depth was not ascertained. It was short and of no consequence.

Q. A tunnel?—A. Yes; a short tunnel. North 60° west 200 feet from the cabin on the right bank of the creek there was a tunnel reported to be 500 feet of tunnel and drift; condition is unsafe.

Mr. GRAY. Hold on. I move to strike out what was reported to you; only state the things that you yourself saw.

Mr. SHERIDAN. We wish you to confine your testimony to your own personal investigations and actual knowledge.—A. Well, this tunnel, perhaps you did not understand me, that I said, reported to have 500 feet of tunnel; that was the depth of it.

Mr. GRAY. Well, I move to strike that out and I guess counsel for the Government will agree to that.

Mr. HUGHES. What you mean is you saw the tunnel but did not measure its depth?—A. No; we did not measure the depth of it on account of its being unsafe to enter. No actual measurements taken. I have in my notes no actual measurements taken because condition was unsafe. Course of tunnel at entrance, north 50° west, 4½ feet wide on the bottom and 4 feet wide on the top and 6 feet high. When they—

Q. Was this on the Tenino claim also?—A. Yes, sir.

Q. Very well, proceed.—A. North 10° east from the cabin 400 feet, approximate distance, a short tunnel, course north 57° east; length 85 feet; 4½ feet wide on the bottom, 4 feet at the top and 6 feet high.

Q. When you give the length of the tunnel, Mr. Langille, we are to understand that you measured the length?—A. Yes, sir; that I measured the length. North 42° west, 170 feet from the highest tunnel noted, 80 feet above the creek bed; not visited; reported to be 150 feet long; timber 8 years old and unsafe to enter. No actual measurements taken.

Mr. HUGHES. We move to strike out all that portion of the answer which, on its face, discloses it is hearsay evidence.

Mr. SHERIDAN. We instruct the witness to first read his notes, and if there be any part of it that is based upon what somebody else saw or said, to omit that part and confine himself to the part which he has personal knowledge of.

Mr. HUGHES. I presume, in order to simplify matters, that counsel will agree that this witness should be instructed not to read his notes, but after referring to them, if he can then speak from memory, to testify as to what he personally saw or knows and not what he gained from other people.

Mr. SHERIDAN. Certainly.—A. The elevation of the house, by aneroid reading, was 500 feet; and all improvements along the creek there were about the same elevation. This constitutes the improvements that we saw on the Tenino claim.

Q. Now, Mr. Langille, before we leave the Tenino claim, we wish to know if you did any work while on this claim in connection with the location of its corners?—A. No, sir; I did not personally; Mr. Stoner while we were—

Mr. HUGHES. One moment. I think he has answered the question.

Q. Are those all the improvements of any kind that you observed on this entry?—A. There was a small cut—open cut—near the tunnel I first mentioned, exposing some coal in a small gulch.

Q. Could you recall approximately the size of this cut?—A. No, sir; I can not. It was covered in so we could not tell anything about the amount of work which was done.

Q. Well, on the Tenino claim did you see any roads or trails?—A. Yes; there is a trail goes up Trout Creek.

Q. Describe that trail, generally, as it appears on the Tenino claim and the direction in which it runs?—A. Well, the general course of it is north and south, and it follows the banks of Trout Creek and crossing and recrossing where the best going was.

Q. Does it pass onto other entries than the Tenino?—A. Yes; it crosses through the Tenino going south, and it crosses the Adams claim.

Q. Now, you may describe that trail as far as it goes in any direction, as far as you followed it.—A. Well, we followed the trail from the mouth of Stillwater Creek, or the mouth of Clear Creek, and it follows up the left bank of the Stillwater to nearly the mouth of Trout Creek and then turns, and went up the stream, crossing the Adams claim and the Tenino; and I did not follow it but a short distance above the cabin—approximately 400 feet farther than the cabin.

Q. Then that is as far as you are personally familiar with this trail?—A. Yes, sir.

Q. Now, did you follow that trail strictly or closely, or did you examine this entry in a general way?

Mr. HUGHES. I object to the latter part of that question as indefinite and as being incompetent and calling for the conclusion and opinion of a witness and not descriptive of what he in fact did.

A. No, sir; my examination on the Tenino claim was along that trail and the tunnels and the workings that were along the creek and contiguous to it.

Q. As described in your testimony here yesterday?—A. Yes, sir.

Q. Now, what other claim did you visit in this group during your examination?—A. In the company of Mr. Kennedy, or whom?

Q. Anyone; whether you were in his company or in the company of others. Take up the next one.—A. On August 14, on the Socorro claim, we found a coal vein with a cut across the vein. The cut was 3 feet on top, 12 on the face, and 12 feet high, and the base of the cut was 16 feet at an elevation of about 1,250 feet.

Q. On what part of the Socorro claim?—A. Well, could I use my own map?

Q. Yes.—A. It is in that roll [indicating].

Q. Take it out.

Mr. SHERIDAN. The witness wishes to refer to maps or tracing which he prepared himself for the purpose of locating this cut.

(No objection was made by counsel for claimants, and witness did so.)

A. At the cut marked No. 1, on the Socorro claim.

Mr. GRAY. I do not think that is an answer to the question. Mr. Sheridan asked you on what part of the claim it was?—A. It was on the west side of the claim, near the west line of the claim, on Barrett Gulch.

Mr. HUGHES. Bennett?—A. It should be Barrett; that is the proper name.

Q. Did you find any other cuts or tunnels or trails on the Socorro?—A. Yes, sir.

Q. Which you yourself saw?—A. South 66 degrees east from this cut, mentioned and designated as cut No. 1, 43 links distant, there is a cut which was 10 links by 6 links; that was the surface diameter or measurement of it. It was full of water, and I could not tell the depth.

Q. Approximately what position does it occupy on the entry?—A. On the west side Socorro claim, on Barrett Gulch.

Q. Did you find any other cuts on this entry, and if so, just describe their location, just giving approximately the part of the area in which they are to be found, without any technical description?—A. On the west side of the Socorro claim, and on Barrett Gulch near the line there is an exposed coal seam 2 feet wide, with an open cut 6 feet long and no width given to it.

Q. Were there any other cuts?—A. Yes; not near the same, but very near to the line of the west—the west line of the Socorro claim on the Barrett Gulch there is an exposed vein $4\frac{1}{2}$ feet wide, with an open cut 6 feet wide, 6 feet on the bottom, and 8-foot space on the left, back of the gulch.

Mr. HUGHES. Also in Barrett Gulch?—A. Barrett Gulch; yes, sir.

Q. Were there any other cuts?—A. No, sir; that is all I found on the Socorro claim.

Q. Were there any other improvements of any description on this claim?—A. No, sir; none that I know of.

Q. That you saw?—A. Well—

Q. Or that you know of?—A. There is this trail across the corner. Is that designated as improvement?

Q. Yes; describe this trail. Is it a foot trail, or might it be used as a wagon road?—A. No, sir; it was a trail which was passable for horses.

Mr. HUGHES. When you say this corner do you mean the south-east corner?—A. Yes.

Q. Go on with the description of the trail.—A. The trail is there used as a foot trail only; but it would be passable for pack horses, but not for any wagon or a sled or anything of that kind.

Q. Describe this trail as far as you followed it in your operations?

Mr. HUGHES. You refer now to the Clear Creek trail?

Mr. SHERIDAN. This last one just last referred to by the witness.

A. Well, I followed it from the Cunningham camp on Clear Creek from the main Cunningham camp, over the line between the Baldwin and the Avon claim, up Clear Creek to its head, up to the tunnel on the Ludlow claim.

Q. Is the condition which you have described of this trail on the Socorro claim the same or different from the trail in any other parts?—A. No, sir; it is all the same from the Cunningham camp up.

Q. To the Ludlow?—A. Yes; to the Ludlow claim.

Q. Did you visit any other points than indicated by you already in your testimony on the Socorro claim?—A. No, sir.

Mr. SHERIDAN. I submit to the honorable commissioner that we now adjourn until to-morrow morning at 10 o'clock.

Mr. HUGHES. May we have some idea of about when you will be able to conclude your testimony?

Mr. SHERIDAN. I think possibly I will conclude by to-morrow. Possibly I shall not require all day to-morrow. I wish to state that one of our witnesses is unable to be present to-day through illness in his family, and we hope to have him here to-morrow, and in that case we will be able to terminate our testimony here to-morrow.

The COMMISSIONER. Then we will adjourn now until to-morrow at 10 o'clock.

(And thereupon this inquiry was adjourned to 10 o'clock a. m., November 23, 1909.)

NOVEMBER 23, 1909—10.00 A. M.

Appearances: Hon. William J. McGee, United States special commissioner; Mr. James M. Sheridan and Mr. William B. Pugh, counsel for the Government; Mr. E. C. Hughes and Mr. John P. Gray, counsel for the claimants.

W. A. LANGILLE, on the stand.

The WITNESS. Mr. Sheridan, before I start in this morning I would like to correct the statement which I made yesterday regarding the date of the traverse and the location of the tunnels on the Tenino claim. Part of the work was done on the 22d when Mr. Kennedy and Mr. Stoner were not present.

Mr. HUGHES. You mean to say that the work described on August 8.—A. Part of it was done on the 22d.

Q. Part of it was done on the 22d?—A. Yes.

Q. In the absence of?—A. Mr. Stoner and Mr. Kennedy.

Direct examination (resumed) by Mr. SHERIDAN:

Q. Mr. Langille, we disposed of the Tenino and Socorro claims yesterday. I now invite your attention to the next claim on which you made observations, and I will ask you to state what cuts, improvements, or developments you found there?

Mr. HUGHES. Would you be kind enough to give the dates and emphasize the dates so that I can follow them.

A. On August 14.

Mr. HUGHES. That is the last date you have already given?—A. It was the same date. On the east side of the Lobster claim, along the course of Barrett's gulch, approximately 9 chains from where the east line crosses Barrett gulch, we found a cut 5 feet wide, 6 feet deep on the bottom, with an average depth of 8 feet, and, on the same gulch, 2½ chains farther up the stream, there was a vein of coal 6 feet wide, with an open cut 8 feet wide, 12 feet on the bottom, and with a 12-foot face. At a distance of 5 chains there was a cut—

Mr. HUGHES. A distance in which direction?—A. It is up the stream from—

Mr. GRAY. What direction is that?—A. In a northwesterly course from the line. There is an open cut 8 feet wide. That was the one he gave you—exposing a vein 5 feet thick, with a cut 12 feet at the bottom, with a depth and width of 6 feet, and a face of 14 feet. One chain farther up there is an opening exposing a vein of coal which is 6 feet thick, an open cut 10 feet wide, 10 feet on the bottom, and 15 feet face.

Mr. HUGHES. You are confining yourself to the date of the 14th?—A. Yes; that is all on the 14th, yes. Now, bearing south 52° west from the northeast corner of the Lobster claim there was a cut exposing a coal vein 5 feet wide, an open cut 9 feet on the bottom, 8 feet wide, and 9-foot face; another one approximately in the same direction from the corner—

Mr. HUGHES. Could you give the distance they are from the corner?—A. It would be about 400 or 500 feet. There was another cut, no measurement of that taken, that had a coal seam.

Q. Was it exposed?—A. Yes; there was a coal exposure. About half way across the east and west width of the claim—

Mr. HUGHES. I didn't catch that.—A. I say, about half way across the east and west width of the claim.

Mr. HUGHES. Where, with reference to the north side line?—A. About one-third of the distance of the claim from the north side line, one-third south. We would rather have the bearing from the corners.

Mr. HUGHES. Not particular. I just want to simply get the idea of the locality of the claim where you found this.—A. Yes. There is an open cut exposing a vein of coal 16 feet wide, an opening 8 feet wide, 8 feet on the bottom, and an 18-foot face.

Q. This, Mr. Langille, is the point last described by you?—A. Yes; it was on the left-hand bank of the gulch which was tributary to the head of Barrett gulch, in approximately the same locality; a few feet farther west there is an open cut exposing a vein of coal 4 feet wide in the cut, 6 feet wide, 8 feet deep, 6 feet on the bottom, with a 9-foot base; but almost directly south of that one, near the center of the claim, is an open cut exposing a coal vein 4 feet wide in the cut, and a cut 4 feet wide, 6 feet on the bottom, and 3 feet deep. That is all I found on the Lobster claim.

Mr. HUGHES. When was that done; on the 14th?—A. Yes, all on the 14th.

Q. Now, Mr. Langille, as I understand you, these were all of a cut, as described by you, as you found on the Lobster claim?—A. Yes, sir.

Q. Were there any improvements, or developments of any kind on this claim that you saw?

Mr. HUGHES. You can call for what he positively knows, only what he saw. Otherwise, I object.

Q. Yes, I asked that. That is all I am asking for.—A. There is a trail known as the Chezum trail, which crosses the northwest corner of the Lobster claim.

Q. How far did you follow that trail yourself?—A. Oh, a very short distance. On the Lobster claim, I did not follow it but a very short distance.

Q. Did you follow it to the extent that it crosses the Lobster claim?—A. Yes.

Q. What was the condition of the trail there?—A. Well, it is a narrow foot trail, as that is made right on the side of the mountain, is all.

Q. Would it be passable by wagon?—A. No.

Q. Just a foot or bridle trail?—A. Well, you could not even call it a bridle trail. It was no more than a foot trail. Now, if I may mention, that is shown in the figures, the trail on a portion of the Lobster claim shows—that is shown in photographs; the trail on a portion of the Lobster claim is shown in the photograph.

Q. There are no photographs in evidence, so we shall not call attention to that point. What other of these entries did you examine?

Mr. HUGHES. Will you ask him to state the same in the order chronologically, take his examination in chronological order?

Mr. SHERIDAN. As we have already failed to follow that at this time, it would simply necessitate repetition.

Mr. HUGHES. The only reason for that would be because you violated it and started in that way. It will be much easier to follow the cross-examination if he will endeavor to keep in the chronological order.

Mr. SHERIDAN. I will request the witness to follow that order, as far as he can do so.

A. Well, on the 14th, the same day, we were on the Lobster claim. I went to the southwest corner of the Syndicate claim, and near the southwest corner I saw a coal exposure there that was covered with snow, and we could not see the size or the extent of the cut.

Q. Did you make any further examination of the Syndicate claim on this day?—A. No, sir; not on that day. That was the 14th.

Q. Did you make any further examination of the Syndicate claim at any other time?—A. Yes, sir; on the 15th. Now, wait until I look that up (examines book). Yes; on the 15th. And some 200 feet east from the cut mentioned, just in the southwest corner of the Syndicate claim, we found a coal seam there. There was a coal seam exposed, but the cut was filled in by slides, and there was no measurement of it taken.

Q. Did you find any other cuts or openings on the Syndicate claim?—A. Yes; a coal exposure just down near the southeast of the center of the claim.

Q. Had there been done any work on it that you observed?—A. A very small amount. There was just enough to show the coal was in; there was no cut of any extent.

Q. Did you find any other improvements or developments on the Syndicate claim?—A. This so-called Chezum trail crosses the Syndicate claim from west to east in the direction we traveled.

Q. Did you yourself travel along this trail in all its parts across the Syndicate claim?—A. No, sir; we did not.

Q. About to what point did you travel?—A. Oh, that would be across the east half of the Syndicate claim.

Q. What was the condition of the trail where you did travel along it?—A. It was a foot trail.

Q. As already described by you?—A. Yes, sir.

Q. Did you examine any other of the entries in this group?—A. Yes, sir; on this same day, August 15, we crossed the Newgate claim.

Q. Describe what you saw there.—A. We saw no work on the Newgate claim at all, and no coal exposures.

Q. Any trails or roads?—A. Yes; the Chezum trail crosses it, in the direction we traveled from west to east, across the north half of the Newgate claim.

Q. Did you yourself traverse this trail?—A. Yes, sir.

Q. What did you find to be its condition?—A. Indistinct in a great many places. Did not show any evidence of having been traveled much at all—traveled or used.

Q. Merely a foot trail?—A. Yes, sir.

Q. Would you say it might be used as a bridle path?—A. It could be used as a bridle path to the break in Clear Creek, but I would not say it could be used for any more than a pack horse there. That would be possible, as it would be possible to conduct a horse anywhere in that high country above the timber line. Going into Clear Creek it was very steep, and the footing was very poor and insecure.

Q. Did you examine any other of these entries, and if so, on what date?—A. On the 15th we went down onto the Ludlow claim, but we did not make any examination of the work there at all that day.

Q. Did you make any examination of any other claim in this group?—A. On August 15 we went up Moore Gulch from Clear Creek.

Q. Onto what claim?—A. Onto the Deposit claim, and approximately 75 yards from the east line of the claim on Moore Gulch, we found a coal seam 3 feet wide on the left bank of the creek—an open cut filled by slide. We did not get any measurements or note the width of the vein at all. One hundred and fifty yards farther up the stream, in a general westerly direction, there is a coal seam in a cut 2 feet wide on top, 3½ feet wide on the bottom. Let me correct that. That was the width of the vein which showed, and this was the vein here from which coal had been taken from for camp use at the Cunningham camp.

Mr. HUGHES. This cut that you have now described?

A. Yes, I said that was the size of the cut. That was the width of the vein which shows. I did not take the size of the cut. The coal had been taken from in the gulch, and there was not much of a cut to it to take the dimensions of, and approximately 1,500 feet from there up the creek in a general westerly direction, which would place it near the west line of the claim, there is a coal vein 12 feet wide and an open cut, which is filled in, and no measurements were taken. Do you want the elevation of this? Sixty feet above this cut, in a general westerly direction, there was a coal seam 3 feet wide and no measurements of any cut taken.

Q. Were those all of the cuts which you found on the Deposit claim?—A. Yes, sir.

Q. Did you find any other improvements or developments of any kind on this claim?—A. Well, there had been some trail cutting down by the gulch to where this coal had been taken for house use.

Q. To what was the extent of that cutting?—A. Well, it was very limited. It was just made a foot trail along the bank of the creek.

Q. Well, these were all the improvements or developments that you found on this claim?—A. Yes, sir.

Q. Did you examine any other claim in this group of entries; and if so, when?—A. It was on August 17. We crossed the Avon and

the Ansonia, and climbed onto the Albion claim, and near the north line of the Albion claim we found a coal exposure; we could not tell the width of it. It was covered over too much by snow. The work done was stripping only; no open cut.

Mr. HUGHES. Will you locate the position of this work that is there. Will you locate it more nearly than near the north line?

A. Well, it is put here, in the center, near the north line. That was all the work that I saw on that Albion claim.

Q. Did you see any other improvements or developments of any kind on the Albion claim?—A. No, sir.

Q. Now you say you crossed Avon and Ansonia in coming to this claim?—A. Yes, sir.

Q. Did you follow along any trail, or merely cross the claim?—A. No, we did not follow a trail at all. Just crossed through the timber.

Q. Did you examine any other claim in this group of entries?—

A. Yes. On August 17 I was on the Agnes claim on a small creek tributary to Bear Creek, near the south line, and about the center east and west, we found a cut 6 feet at the bottom, 7 feet wide, and 6-foot face, and 3 feet in depth, and the cut had caved in so the original size could not be told. Almost due west from that to where this small stream entered the Bear Creek, there was a coal seam 6 feet wide exposed in an open cut 6 feet on the bottom, 6 feet wide, and 10 feet on the face. On Bear Gulch, almost directly west of the last-mentioned cut, there was a coal cropping, 14 feet wide, an open cut 16 feet wide, 4 feet on the bottom, and 12-foot face. In a northeasterly direction from that on Bear Creek, and about 250 yards, there is a coal seam 2 feet wide, and no work done. One hundred and fifty feet from there, in a general northeasterly direction from this cut, there was a seam, a small seam, and a cut 3 feet wide, 4 feet on the bottom, and 5-foot face.

Q. Just a moment, Mr. Langille. You stated a certain distance from this cut. As I recall your description, the last point described by you was an exposure with no work done on it; is that correct?—A. Yes, sir.

Q. All right, proceed.—A. Now, let me correct this distance. The last one was more nearly east instead of northeast. In a northeasterly direction, which is approximately 168 feet, there was an open cut 8 feet wide, 10 feet on the bottom with 72-foot face. There was a coal seam. There were no walls discernible, but it was estimated to be about 10 feet wide. Approximately 150 feet in a northerly direction from this last cut there was a cropping 5 feet wide on the left bank of Bear Creek, in a cut 4 by 6 by 6 feet. Approximately 106 feet north from this last cut there was a coal cropping, and no cut visible at the place. Approximately 270 feet in an easterly direction from the last-mentioned cut there was a coal cropping with no walls defined and a small cut 4 by 4 by 6 feet. That is all the work or coal exposures I saw on the Agnes claim.

Q. Did you see any improvements or developments of any kind on this claim?—A. Yes, there is a part of the so-called Chezum trail crosses the north half of the Agnes claim.

Q. Did you traverse this trail yourself?—A. Yes, I did, a portion of it.

Q. What was the condition of the portion of it which you saw?—A. I call it a foot trail.

Q. Just as already described by you?—A. Yes, sir.

Q. What other claim in this group of entries did you examine?—

A. Well, on this 17th, near the southeast corner of the Maxine, approximately 100 feet north of where the Chezum trail crosses the corner of the claim, I found a coal crop 16 feet wide, and an open cut 16 feet long, 4 feet deep, and 3 feet wide. That is all the work that I saw on the Maxine claim.

Q. As I understand you, a part of what you call the Chezum trail crosses the southeast corner of the Maxine claim?—A. Yes, sir.

Q. What was the condition of this trail on the Maxine claim?—A. It was as previously described.

Q. You were on it yourself at that point?—A. Yes, sir.

Q. Did you see any other improvements or developments of any kind on this claim?—A. No, sir.

Q. What other claim did you examine of this group?—A. On August 17, the same date, I was on the Octopus claim, near the southwest corner, and east of the Chezum trail we saw a coal seam that had been covered by a slide. There was a small open cut 4 feet wide, 6 feet high, and 8 feet long, and another coal seam 3 feet wide, and an open cut 4 feet wide, 8 feet long, and 4 feet deep.

Q. About how far from the first cut described by you on the Octopus, and in what direction?—A. It was very close to it, just a few feet difference in the two cuts. In almost an easterly direction from the last-mentioned cut there was a coal seam that was snow covered and the extent of the work was not visible.

Mr. HUGHES. How far was it?—A. About 100 feet. I think that is the same day, August 17.

Q. Just a moment. Were these all the cuts that you found on the Octopus claim?—A. Yes, sir.

Q. Did you find any other improvements or developments of any kind on this claim?—A. Well, the Chezum trail crosses in a north-easterly and southwesterly direction.

Q. Did you traverse this trail?—A. Not all the distance. Only that portion that lead over to these cuts from the corner.

Q. In what condition was the trail when you saw it?—A. As previously described.

Q. Did you examine any other claims in this group?—A. On August 17, approximately 200 feet away, on the northeast corner of the Candelaria claim, very near to the north line, there is a coal seam 33 feet wide in a cut 33 feet long, 4 feet wide, and 6 feet deep. That was all the cut I saw on the Candelaria claim.

Q. Did you find any other improvements or developments of any kind on this claim?—A. No, sir.

Q. Any traces?—A. No, sir.

Q. Did you examine any other claim in this group, and if so, when?—A. On August 17, with Mr. Kennedy and Mr. Stoner and Mr. McGrath and Mr. Wingate we crossed the Lucky Baldwin claim, going to the east side from the west side, on a tributary of Clear Creek. Near the east line I found a coal seam 4 feet wide and with 1½ feet of coal, partly shale and part coal.

Q. Was there any development work done at that point?—A. No, sir.

Q. Then by that you mean that the coal you saw—

Mr. HUGHES. You say—pardon me, I do not mean to interrupt. Finish your question.

Mr. SHERIDAN (continuing). Then, by that you mean to say that the coal you saw there was a gulch exposure?—A. Yes, sir.

Mr. HUGHES. I object to that as leading.

Q. Did you see any other developments or improvements on this claim?—A. Yes, sir.

Q. Describe them.—A. At a cut, which is from this last cut approximately 225 feet, there is a coal seam $1\frac{1}{2}$ feet thick; no improvements of any kind. I have got Mr. Kennedy's numbers for those cuts or coal exposures. That was visited on the 19th.

Q. Have you been giving those numbers in describing these cuts?—A. No.

Q. Then we need make no reference to the numbers as far as I can see. These descriptions are sufficient as given. Did you see any other improvements or developments on this claim?—A. No, sir; none that I could say positively that were on the Lucky Baldwin claim—that I could positively state that were on the Lucky Baldwin.

Q. Did you find any trail on the Lucky Baldwin?—A. Yes; there is just a portion of the Clear Creek trail—that is, on that claim.

Q. Did you see it yourself on that claim?—A. Yes, sir.

Q. What was its condition there?—A. It was a trail that was a good foot trail and suitable for pack horses.

Q. About what extent of this claim does that trail traverse?—A. A very small portion.

Q. Approximately, what distance?—A. Oh, less than half a mile; it is less than a quarter of a mile.

Q. Did you examine any other claim in this group?—A. Yes, sir; on this same day.

Q. August 19?—A. On August 19, we were on the Lyons claim. At 250 feet east of the last-mentioned cut there is an exposure of coal and shale $2\frac{1}{2}$ feet wide.

Q. How far east, approximately, is the cut from the western boundary of the lines of this claim?—A. Well, as near as I know, it would be very close to the line. I didn't see where the line crosses.

Q. With regard to the north and south directions, how would that be?—A. About the center in the north and south direction. About 150 feet east of the last-mentioned cut there was a coal exposure of 4 feet. No work had been done at all.

Q. Did you examine this claim as extensively as you did the others described by you?—A. No, sir.

Q. Why didn't you?—A. Well, there was no work; no evidence of any work.

Q. Did you traverse the claim yourself?—A. Yes, sir.

Q. For the purpose of ascertaining if there were any other improvements or developments?—A. Yes, sir.

Q. And you found—

Mr. HUGHES. Objected to—

Mr. SHERIDAN (continuing the question). You found—did you find any other improvements or developments on this claim?—A. No, sir.

Mr. HUGHES. I object to that question as leading.

Q. Did you examine any other claim in this group; and if so, when?—A. Well, on this same claim, 100 feet east of the last-mentioned cut, there was a blossom, so called, of fine black coal.

Q. Was there any work done on it?—A. No, sir; there was no work done on it that I could see. On August 19 I was on the Bedford claim, and near the center. It would be very near the center of the claim, approximately 1,200 feet from the northwest corner, I found a vein of coal 2 to 3 feet wide.

Q. Any development work?—A. No, sir.

Q. Did you find any other improvements or developments on this claim?—A. At 30 feet in a northeasterly direction from the last-mentioned coal seam there was a coal exposure 1 foot wide.

Q. Any development work?—A. No; and approximately about 90 feet in the same direction there was a coal seam 2 feet wide; 2 feet plus.

Q. Were there any improvements or developments on this claim, so far as you saw?—A. There was approximately 200 feet in a northeasterly direction. There was a coal seam 5 feet plus in width; no work done. I think that was all the work I saw on this entry.

Q. Did you examine any other claim in this group?—A. We traversed the crest of that ridge in a general northeasterly direction, across the westerly side of the Boston claim, and onto the Tulare claim near the east and west center, just off of the center of the claim in a north and south direction.

Mr. HUGHES. Which claim is that?—A. The Tulare.

Q. Go ahead.—A. There is a coal cropping $4\frac{1}{2}$ feet wide, and no work done.

Q. Did you, while on the Boston claim, make any examination thereof?—A. No, sir; no more than traversing the ridge.

Q. Did you make as general an examination of the Tulare as you did of the other claims described by you?—A. Not so much as on the claims where the work had been done.

Q. Why didn't you?—A. There wasn't any work. No work had been done that was visible.

Q. Did you ascertain this fact yourself?—A. Yes, sir.

Q. Did you examine any other claim in this group?—A. Near the last-mentioned coal seam of the Tulare claim there was a small coal exposure, and on the break of the hill toward Canyon Creek there was 5 exposed coal seams, one above another.

Q. Any work had been done?—A. No; no work had been done.

Q. When were you on the Boston claim, Mr. Langille?—A. August 19.

Q. And on the Tulare?—A. August 19.

Q. Proceed.—A. There was one coal seam 9 feet—

Mr. GRAY. Where is that?—A. On the Tulare, one 6-foot, one 3-foot, one 2-foot, and one 1-foot, lying one above another.

Q. Are these the seams already described by you on these claims, on which you stated no development work had been done as far as you could see?—A. Yes, sir.

Q. Proceed.—A. Two hundred and fifty feet in a southwesterly direction from U. S. L. M., station No. 7, there was a coal seam 12 feet plus in width, and no work had been done.

Q. Being that coal seam as described by you as being on the Tulare claim?—A. Yes; and that is all the work on the Tulare claim.

Q. Did you find any other improvements or developments of any kind on this claim?—A. No, sir.

Q. Did you examine any other claim in this group; and if so, when?—A. On August 19 I was on the Plutocrat claim. Approximately 300 feet, in a northerly direction from U. S. L. M., station No. 7, there was a coal seam, but I could not get the width of it taken. There was a coal exposure there.

Q. Was there any work done at that point that you observed?—A. No, sir.

Q. Did you see any other improvements or developments of any kind on these claims?—A. No, sir.

Q. Did you examine any other claim in this group; and if so, when?—A. On August 20. Approximately 1,000 feet—

Mr. HUGHES. On which claim?

A. On the Carlsbad claim, 100 feet from the north line of the claim, on Clear Creek, there is a coal vein 10 feet plus in width, and then below that a coal seam; that is, it was covered up so you could not see the width. It was just one line below the other.

Q. At these points described by you, was there development work, or were these natural exposures?—A. No. There had been some work done there, but I could not state the extent of them.

Mr. GRAY. What date was that?—A. August 20. Three hundred feet in a westerly direction from the above-mentioned seam, on the left bank of Clear Creek, there is a coal seam 10 feet plus in width, from which coal had been taken for use in the Cunningham camp.

Q. Was there any development work done at this camp?—A. Yes, there had been, but the extent of it I could not state, as it was too covered up; the coal had caved, and the bank had caved. That is all the coal work I saw on that claim.

Q. Did you see any other improvements or developments of any kind on this claim?—A. Yes; Clear Creek trail crosses diagonally from the southwest to the northeast corner of the claim.

Q. Did you traverse this trail across yourself?—A. Yes, sir.

Q. What was its condition?—A. It was a fair foot trail and suitable for pack horses.

Q. Did you examine any other claim in this group?—A. Yes. On August 20 I was on the Ludlow claim; and on the right bank of Clear Creek, near the southwest corner there was a tunnel $4\frac{1}{2}$ feet wide on the bottom, 4 feet wide on top, and 5 feet high. The course of the tunnel was north 45° west 62 feet to where the tunnel forked; thence in the same course 10 feet to the end of the left branch; course north 15° west 46 feet to the end of the right branch.

Q. You examined this tunnel yourself, personally?—A. Yes, sir.

Q. What was the interior condition, as you observed it?—A. Very good. The entrance of the tunnel was timbered, and other portions of it timbered where it was necessary.

Q. Continue your description, please.—A. Well, that is all the description I have.

Q. These were all the improvements that you saw on this claim?—A. There was a cabin there on the claim.

Q. Describe it roughly?—A. It was a log cabin which had been used as a camp. I have not the size of it.

Q. Do you recall approximately the size of it?—A. Why, I would only hazard a guess at it. I did not note the size of it.

Q. Did you see any other improvements or developments of any kind on this claim?—A. Well, the trail, the Chezum trail, comes

down off the mountain on the right bank, or the west bank of Clear Creek nearer to the tunnel, and there is an extension of the Clear Creek trail up to the Chezum cabin.

Q. What is the condition of the extension of the Clear Creek trail as it appeared on the Ludlow to you?—A. Well, it was a foot trail only.

Q. On the Chezum trail, as it was found on this claim by you?—A. A foot trail, rather difficult of travel.

Q. Did you examine any other claim in this group of entries; and if so, when?—A. Yes, sir; there is on the Newgate claim.

Q. On what day?—A. On August 20. On the Newgate claim there is a short tunnel approximately 12 feet long on the left bank of Clear Creek, about 400 feet from the southeast corner of the claim, and there is a part of what had been a camp with a tent house. That had a tent roof.

Q. What was the condition of this tunnel on the Newgate?—A. Oh, the entrances of it had been timbered. It was not in good condition at all. It had partially caved.

Q. Did you enter the tunnel?—A. No, sir; only just at the entrance of it.

Q. Why didn't you go in any farther?—A. Why, we could see the end of it, and I did not see any necessity of going into it.

Q. Were those the only improvements or developments that you saw on this claim?—A. Well, as I mentioned before, the Chezum trail crosses the northern half of the Clear Creek trail across the southeast corner.

Q. Did you examine any other claim in this group; and if so, when?—A. No, sir; that constitutes the extent of the examination.

Mr. SHERIDAN. I will turn over the witness to you now for cross-examination.

Mr. HUGHES. May I be excused for a moment?

The COMMISSIONER. Yes.

(Recess.)

Cross-examination by Mr. HUGHES:

Q. Mr. Langille, what was your official position in the month of August, 1909?—A. Forest supervisor, in charge of the Shugatch and Tongas National Forest in Alaska.

Q. Who was your immediate superior?—A. Mr. Allen.

Q. What was his position?—A. District forester, in charge of District 6, headquarters at Portland, Oreg.

Q. You have said that a letter was received containing certain instructions respecting the examination of claims in the Bering River District in Alaska, that you accepted as your instructions for the examination which you have been testifying about?—A. Yes, sir.

Q. By whom was that letter written and to whom?—A. It was written to Mr. Ames, who was chief of the inspection department of the Shugatch and Tongas National Forest in Alaska.

Q. And by whom?—A. I would not say whom it was signed by, as I don't recall.

Q. Where is that letter?—A. I don't know.

Q. You say you read it?—A. Yes, sir.

Q. You have attempted to give its contents, I believe. Are you able to testify from recollection what the specific instructions con-

tained in that letter were, which you undertook to carry out?—A. That was them.

Q. And to give them?—A. That was the tenor of the letter. That we were to go to the claims and examine them to determine the amount and the extent of the work that had been done.

Q. What supervision had the forestry department over the amount of work done, and what concern did it have over the amount of work that had been done on these claims?—A. A portion of the claims were in the Shugatch National Forest, and it is in the practice of the service of forest supervisor to report on all claims coming up for patents that are within the boundaries of the forest reserve.

Mr. SHERIDAN. If counsel will permit the interruption, I have here a copy of the letter of instructions to Mr. Ames from George H. Cecil, acting district forester, dated July 29—

Mr. HUGHES. I suppose he could read the data.

Mr. SHERIDAN (continuing). 1909. And also telegram July 23, 1909, relating to the instructions referred to. I hand this to you at this time at the suggestion of the representative of the forestry service, and turn these papers over to you.

(Papers handed to Mr. Hughes.)

Mr. HUGHES. How recently have you read that letter, or any copy of it, Mr. Langille?—A. Well, I have not seen the letter or a copy of it to read it. Never saw any copy of it at all, and the original letter I have not seen since; not since we left the Cunningham group of claims.

Q. Now, you construed its instructions to authorize you not merely to examine that part of the district which was embraced within the forest reserve, but likewise to investigate as to the work that had been done upon the coal claims, did you, or were you simply making your investigations generally for the purpose of ascertaining whether these were coal lands embraced within the forest reserve?—A. Well, no, sir; my purpose in going to the claims was to ascertain the amount of work and the amount of timber that was on the claims.

Q. Well, all that your department was concerned with was the amount of timber on these claims and the evidence as to whether or not they were coal lands; isn't that true?—A. Only formal reports that were submitted to the district forester, or the forester in regard to any claims embodying the amount of improvement work done.

Mr. HUGHES. Read my last question.

(Question read by the reporter.)

A. I don't know that I would be qualified to say that they were coal lands.

Q. Yes, but you were only authorized to investigate and report upon the timber and what evidence you found as to the presence or exposure of coal?—A. Yes, sir; and the work done.

Q. And in that connection, as evidencing coal you mentioned the work done which you found?—A. Yes, sir.

Q. Now, the first work that you did in the examination of these claims was on the 14th of August?—A. Yes, sir.

Q. In whose company were you on that day?—A. On that first trip we went away from the camp there was Mr. George Wingate, Mr. F. D. Ames, and Mr. James McGrath.

Q. The first claim on which you went was what?—A. On the Socorro claim.

Q. How did you reach the Socorro claim? From what point did you start?—A. From some point on Clear Creek below the mouth of Barrett Gulch.

Q. Where did you stay the night before?—A. At the Cunningham camp.

Q. Didn't you leave the camp on the morning of the 14th?—A. Yes, sir.

Q. By what route did you reach the Socorro claim?—A. Followed up Clear Creek to, I wouldn't call it a trail, it was just a marked way or road.

Q. You followed the trail up as far as it went until you reached the Socorro claim?—A. No; I think we did not depart from the Clear Creek trail before we reached the Socorro line.

Q. Well, until you reached the point near the Socorro claim you followed the trail?—A. Yes, sir.

Q. You did not inspect either the Lucky Baldwin or the Carlsbad for the purpose of ascertaining the condition of those claims as being timber claims, or for the purpose of determining the amount of timber on them?—A. Mr. Ames and Mr. Wormsted examined the timber on the claim and reported them. I did not attempt that at all.

Q. Then you did not attempt to make any examination of the timber?—A. No.

Q. You gave your attention to investigating as to the presence of coal and of work done?—A. Yes, sir.

Q. How did you come to go to the Socorro claim first? Did you form any reason for that?—A. No special reason. I employed Mr. McGrath, the resident agent of the parties interested in the Cunningham group, to go with me and show me the workings.

Q. Was he at that time working for Mr. Cunningham?—A. I presume he was.

Q. You are speaking and give your testimony under oath from presumptions, are you; is that your purpose here?—A. Well, I could not say that he was under pay. I employed him.

Q. You found him there?—A. Yes; he was there living in the camp. I did not ask him if he was under pay from Mr. Cunningham at all.

Q. You did not employ him because you thought he was the agent of Mr. Cunningham for any purpose?—A. No, sir; I employed him because he was familiar with the workings on the ground and with the coal exposures and the routes of travel.

Q. How do you know that?—A. From his own statement.

Q. Then you mean to say that you did interrogate him for the purpose of obtaining information, that in addition to being an inspector you are also a detective?—A. No, sir.

Q. That wasn't your purpose at all?—A. No, sir; not at all.

Mr. SHERIDAN. I object to any such undignified insinuations as that. The witness is testifying frankly, and in a manly way, and there is no call for any such a remark to be made of the record.

Mr. HUGHES. If the commissioner please, I am going to restrain myself from any answer to the comments of this young gentleman. I will say, however, to the witness if he will answer from his own personal knowledge and not from hearsay or by way of giving his opinion or presumptions, he will be treated very fairly by me in the cross-examination; but if he does answer in any other way I must

search the witness to ascertain the credibility of the testimony he gives and the weight to be attached to it.

Q. Now, Mr. Langille, you have described nine cuts that you found on the Socorro claim. I will ask you if you found these exposures and openings following up the gulch or stream?—A. I would like to say that I do not think I stated there were nine exposures on the Socorro claim.

Q. Well, I think I have kept a correct account of that, but regardless of whether that is correct in number, I will ask you if you found those that you have described on the Socorro claim in following up the course of the gulch or small stream which runs down from the northwest into Clear Creek?—A. I did not follow up the gulch. We followed up the west side of the gulch, and went down in it at right; almost where we left the top of the ridge was almost above the first cuts mentioned.

Q. I don't mean to inquire whether you followed up the bottom of the gulch or the course of the break made by the gulch; you followed in that general direction?—A. Yes, sir.

Q. Followed in the course of the gulch to ascertain the exposures that had been made along the hillside where the cuts had been made in the operations—in exposing the veins which had been laid bare by the action of the waters in cutting that gulch?—A. Why, I did not attempt to follow up the gulch to see how much coal might be exposed. I went directly to the first workings; to the only workings that I knew of, that Mr. McGrath reported as being on that claim.

Mr. HUGHES. Now, again I want to suggest that Mr. McGrath's reports or statements are hearsay, and I do not want to interrogate you in any unpleasant way, and I hope you will refrain from giving in your testimony any statements made by Mr. McGrath, and if you will refrain from doing so I will refrain from any unpleasant cross-examination.

The COMMISSIONER. He suggests that he went to these cuts that Mr. McGrath pointed out to him; that he had no previous knowledge of these claims and he obtained his information from Mr. McGrath, as I understand it.

Mr. HUGHES. Yes.

The COMMISSIONER. I think that is perfectly competent testimony.

Mr. SHERIDAN. I think so. I will say to the witness we do not care to have any information that was given to him by Mr. McGrath which he himself knows nothing about, but anything that you have personal knowledge of, Mr. Langille, we will be glad to hear.

Mr. HUGHES. I think the commissioner is entirely right. The only point I had in my mind was the statements of what McGrath reported to him. I do not mean to criticise the witness in any respect at all. I simply want you to avoid giving any statements made by other persons, whether by Mr. McGrath or anyone else.—A. I was endeavoring to do that, Mr. Hughes.

Mr. HUGHES. Have you the map that Mr. Kennedy identified?

Mr. SHERIDAN. I will send for it. [Map sent for.]

Q. Mr. Langille, you have referred to the map that the Government has not introduced in evidence as a part of the direct examination in giving your testimony. Is this a map made by you?—A. Yes, sir.

Mr. HUGHES. The map that is now before you I will ask the reporter to mark for identification.

(Map marked "Claimants' Exhibit No. 1" for identification by the reporter.)

Q. I wish you would now indicate on this map where the Socorro claim is indicated on it, the course you traversed in going over the Socorro claim on the 14th day of August, and along which course you found the opening which you described?—A. Yes, sir.

Q. Please do so. Describe by reference to any markings upon this claim what that course was. I will have you indicate by a line drawn here the approximate course that you pursued in crossing the Socorro claim? [Witness does so.]—A. Well, I will designate this spot as the point of departure from the Clear Creek trail. We went in a general northwesterly direction.

Mr. HUGHES. With a pen and ink. [Witness does so.]

Q. Now, then, the line that you have marked with pen upon the Claimants' Identification No. 1 represents the course you traversed, and is on a hillside on the southwesterly slope, or the southwesterly side of the gulch depicted upon this map?—A. Yes, sir.

Q. And the openings you have described are approximately along the line indicated by you with a pen?—A. This was the first opening that I saw. The end of that mark there, marked "C-1" on the map. That first coal opening on the Socorro claim.

Q. As I understand you found them in going up there?—A. No, sir; that was the route of travel to the first exposure.

Q. Now, all the cuts you described lay on what portion of the Socorro claim?—A. On the west side, near the center, near the north and south center of the Socorro.

Q. Now, then, Mr. Langille, the next claim that you visited was the Syndicate?—A. The Lobster.

Q. Oh, yes; pardon me. How many openings did you find on the Lobster?—A. Nine coal exposures on the Lobster.

Q. I had reference to the Lobster when I suggested the number of openings nine from my notes. I see I was mistaken. Now, indicate with your pen a continuation of the course you traveled in discovering the coal exposures or openings that you have described in your testimony?—A. I followed directly up.

Q. Just indicate it on there. We understand, of course, that this is only an approximation, as near as can be attempted to put it upon the paper of the court's proceeding.—A. You want a separate line drawn?

Q. I would like to have you draw a separate line with pen as distinctly as you can. [Witness does so.]

Q. Did you take any steps to determine for yourself, by your own investigation or your own measurements, where the boundary line of these two claims, the Socorro and the Lobster were, and where the corners were?—A. Yes, sir.

Q. What did you do?—A. I went to the southwest corner of the Syndicate claim, or the northeast corner of the Lobster claim, and with a compass followed the line, which is the west line of the Socorro and the east line of the Lobster, down to the bank of Barrett Gulch, and where we had a fixed point on the line I set up the compass and sent Mr. McGrath down into the gulch to line him on the line where the line crosses the gulch.

Q. For the purpose of fixing the boundary line between the Lobster and the Socorro?—A. Yes; where it crosses Barrett Gulch.

Q. Now, did you make any other examination for the purpose of determining the boundaries of the Lobster and the Socorro claims on that day?—A. No, sir; I had run a traverse from these workings on the Socorro claim, chained up to a given point; I got my bearings from the corner, and from another point some four chains distant, and took cross bearings on these workings which are on this portion of the Lobster [indicating].

Q. Now, was that the entire work done by you on the 14th?—A. Yes; with the exception of going over here to this and determining the location of that cut there.

Q. On the Syndicate?—A. On the Syndicate; yes.

Q. The cut indicated by a cross on this map, claimants' identification 1?—A. Yes, sir.

Q. Did anyone go with you at that time?—A. Yes, sir; Mr. McGrath was there, and Mr. Wingate and Mr. Ames.

Q. Did you do that at the time you went to the northeast corner of the Lobster claim?—A. That was after I had marked in these locations and gone over to that and noted the size of the cuts.

Q. Then, after following the entire course indicated by the line drawn by you in ink on this map, you went over to the Chezum trail, and went northeasterly to the point you have indicated on the Syndicate? Is that right?—A. I went back to the corner of this claim and located that point.

Q. And then went to that point and inspected it?—A. Yes, sir.

Q. Now, that was all the work you did on the 14th?—A. Yes, sir.

Mr. SHERIDAN. When you say all the work, do you mean all the survey work, or the variations of the lines only, or what?

Mr. HUGHES. I can only determine from this witness what he did by asking him questions.

Mr. SHERIDAN. I wish to know whether that question includes what he did, described as being an examination of cuts as well as survey work.

Mr. HUGHES. Do you misunderstand me at all? I am asking the question to find out, Mr. Langille, what work you did in the way of an inspection you were making yourself of these claims on the 14th. I don't think you misunderstand me; but if you did, that is what I want to know; and is that a correct statement of the work you did on the 14th?—A. Yes; I passed along up and checked the size of the cuts as I went along.

Q. Yes. I do not, in my examination, wish to go into the details of what you have already testified to and described in your direct examination.—A. No; that is what I did.

Q. I want to cover the ground as much as possible, and simply to ask if that is all the ground you covered in that inspection made on that day?—A. Yes. In determining the location of the workings, I have stated, I went to the corner and ran this line and fixed the locations then in that way.

Q. And during my cross-examination I have not intended to go into any of the details of the work which you have described already, because you have described it already, and I do not want to repeat it. I want to have you indicate upon this map the course you pursued on

the ground and indicate upon it where you found the exposures in question.—A. And the manner in which I determined them?

Q. You have described that; and if at any time, then, it is necessary for a proper answer by you, you may describe over what you did in determining it. I think the witness understands me and my purpose, and whenever you are in doubt about any question kindly say so, Mr. Langille. I don't want to mislead you in any way. At the end of that work where did you go?—A. We returned to the Cunningham camp.

Q. And left that camp on the morning of the 15th?—A. Yes, sir.

Q. And to go to what claim?—A. We went back to the crossing of the Syndicate claim, about this point here [indicating].

Q. Now, will you take your pen and commence at the point where you began on the 15th and indicate the road you followed on the 15th in making the inspections which you have just testified to?—A. [Witness does so.] Is it necessary for me to mark it down from there to that camp?

Q. Only as far as your work went that day.—A. Well, that is as far as it went. Well, I went to here [indicating].

Q. Now, the line drawn by you in ink, beginning at a point near the west line of the Syndicate claim and on the right-hand side of what you have indicated here as the Chezum trail and ending at or near the southeast corner of the Newgate claim, is the line you have just drawn representing the ground covered in the inspection that you made, or the inspection made by you, on the 15th?—A. Yes; that is, approximately. You understand that is only approximately right.

Q. Certainly; you are attempting to give only there the approximate route of travel. Now, on or along that route of travel you have indicated in what manner any exposures that you found?—A. One marked "C-16," "C-17," and the tunnel we paid no attention to on that day.

Q. The tunnel on the Ludlow claim, marked with the word "tunnel"?—A. Yes; we passed it. I did not give it any examination. This cut here, we noted that on the short tunnel.

Q. By a cross? You noted it by a cross inside?—A. Yes, sir.

Q. Going back to the work of the preceding day, I will ask you, in order to make it definite, if the line drawn in ink, beginning at the point of departure from the Clear Creek trail on the Carlsbad claim, and extending in a northwesterly—generally northwesterly—direction to a point northwesterly of the center of the Lobster claim, refers to the route traveled by you in your inspection of the 14th, except for the further description that you have given of going to the northeast corner of the Lobster claim and up to the point described on the Syndicate claim, which I ask you now to indicate thereon?—A. [Witness does so.]

Q. Now, the line which you have described with pen and ink lines on the Lobster and on the Socorro, and at the southwest line of the Syndicate claim, is the general description of that route traversed by you on the 14th, is it?—A. Yes, sir.

Q. And along that route you have indicated in what manner the openings of coal exposures found by you?—A. Those where the strike and dip were taken are marked by the conventional sign, and those where the strike and dip is not taken there is a cross to indicate them.

Q. Did you locate any other corner on the Syndicate or Newgate or Ludlow claims on the 15th in the work you did on that day?—A. Newgate, southeast corner of the Newgate, on the 15th.

Q. It would also be the southwest corner of the Ludlow?—A. Yes.
(Recess taken until 2 p. m.)

AFTER RECESS.

NOVEMBER 23, 1909—2 P. M.

Hon. William J. McGee, special United States commissioner; Mr. James M. Sheridan and Mr. William B. Pugh, counsel for the Government; Mr. E. C. Hughes and Mr. John P. Gray, counsel for the claimants.

Mr. W. A. LANGILLE on the stand.

Cross-examination resumed by Mr. HUGHES:

Q. At the conclusion of your work on the 15th, you returned to the Cunningham cabin for the night?—A. Yes, sir.

Q. And on the morning of the 16th, to what claim did you go and by what route?—A. We went from the Cunningham camp up the Clear Creek, over to the mouth of Moore Gulch, and then up Moore Gulch.

Q. Mark your route by indicating thereon.—A. Yes; from Clear Creek across the west side of the Carlsbad claim, and westerly—in a general westerly direction—across the Deposit claim, and in a northerly direction on the Candelaria claim. Didn't go farther than that, I think.

Q. To the intersection of what?—A. To the line between the west line of the Deposit claim and the east line of the Candelaria. I should not have gone quite that far.

Q. Now, on the line you have drawn with the pen paralleling the black line which appears on Claimant's Identification No. 1, represents approximately the route that you traveled on the 16th in passing over the Deposit claim?—A. Yes.

Q. And the direct line across the Deposit claim, from east to west, as appearing upon this map, would indicate about, represent what you have marked with the legend "Moore Gulch"?—A. Yes, sir.

Q. The opening or cuts or exposures of coal which you see on the Deposit claim on that day are indicated on this map, are they?—A. Yes, sir.

Q. And in what manner?—A. By a cross conventional sign indicating the strike and dip in the formation.

Q. I see a point near the east line of the Deposit claim. Does that indicate or represent any coal exposures?—A. No; that was just a mark of the pen.

Q. This black line at figures 3, 4, 500, represents what?—A. Strike and dip of the formation at that point, as ascertained by me.

Q. On that day did you locate the corners of the Deposit claim?—A. No, sir.

Q. Did you do any other work on that day?—A. No, sir; it was on the 20th.

Q. This was on the 16th?—A. On the 21st.

Q. I mean—my question is whether you did any other work on that day?—A. No, sir; not on that day.

Q. Either on the Deposit claim, or any other claim?—A. No, sir; we returned to the Cunningham camp.

Q. Were you delayed any by unusual rains that day in your work?—A. No, sir; I do not recall that we were.

Q. On the 17th you left the Cunningham camp again and went in what general direction? Please note by a line drawn by your pen, the approximate course of the route traveled by you in the investigations made on the 17th.—A. We left the Cunningham camp, across Clear Creek, and went in a general direction to the west; as near as I know, it would be close to the south line of the Avon claim, and across the Ansonia claim, in a northwesterly direction to the west line, and then continued in a general northwest direction across the Albion claim to a point marked on this map as C22.

Q. What are those characters intended to represent, "C22?"—A. Cut No. 22.

Q. From that point indicate where you proceeded, by continuing the line.—A. In a general northerly direction across this small creek, and to a tributary of Bear Creek, and then down this tributary to Bear Creek to the main stream, to its intersection with the main stream, and then down the creek nearly to the corner.

Q. Nearly to the southwest corner?—A. Nearly to the southwest corner of the Agnes claim, and then back up Bear Creek in a general northerly direction, and thence in a generally north direction to the Chezum trail, and then along the Chezum trail to the corner of the Agnes claim, and thence in a general northeasterly direction across the southeast corner of the Maxine claim, to a cut marked "C18" on the Maxine claim, and thence in a southerly direction to the corner, to the southwest corner of the Octopus claim, and the southeast corner of the Maxine claim; and then in a general northerly direction along the Chezum trail, and thence in an easterly direction to a cut marked 21, 19, 20.

Q. What do you mean?—A. Cuts marked 19, 20, and 21; and thence back over the same route to the southwest corner of the Octopus, and the southeast corner of the Maxine claim; and thence in an easterly direction to a cut marked No. 32 on the Candelaria claim, nearly on the north line of the Candelaria claim.

Q. Did that complete the route and the investigation for the 17th?—A. Yes; that is all for the 17th.

Q. Now, the line traced by you in ink, starting from the Cunningham camp, and extending across the Avon, Ansonia, Albion, and Agnes, the corner of the Maxine, and the Deposit, and down to a point near the northwest corner of the Candelaria represents on this map, so far, or as near as you can approximate, the route that you traveled on your investigation that day?—A. Yes, sir.

Q. And you have indicated by characteristics previously placed upon this map, the cuts or other exposures of coal found by you on your investigations for that day, and as testified to by you in your direct examination?—A. Yes, sir.

Q. You returned that night to what place?—A. To the Cunningham camp.

Q. Who was with you on the 16th and 17th?—A. Mr. James McGrath and G. Wingate.

Q. Now, on the 18th, you may describe your course?—A. On the 18th we left the Cunningham camp and went down the road leading from the Cunningham camp to the mouth of Clear Creek, at the junction of Clear Creek—

Q. (Interrupting.) Pardon me for interrupting, there is one thing I want to ask you about before you go on with your answer again. I observe upon this map, marked "Claimant's identification No. 1," you speak of a certain gulch or creek as being Bear Creek. You have not so designated it upon this map. Will you write the words "Bear Creek" on the map? [Witness does so.]

Mr. HUGHES. Now, read the question and let him finish the answer. (Question read by the reporter.)

Mr. HUGHES. Now proceed with your answer.

A. We left the Cunningham camp in the morning and went down the road leading to the Cunningham camp—

Q. That is, you went southward?—A. Yes, we went southward; in a southerly direction to the junction of Clear Creek and Stillwater Creek and thence along the—

Q. Pardon me, just a moment—Stillwater Creek don't appear on your map?—A. No, sir; not on this map.

Q. What is its general course with reference to this map? That is, where would it be if this map were on a larger scale, where would it be located?—A. Well, parallel to the south line of these claims to the junction of Clear Creek and thence its course is southerly. It heads in Kushtaka Lake and thence in a general easterly direction to its junction.

Q. Parallel to several of the lines of these claims south?—A. Yes, sir.

Q. To its junction with Clear Creek?—A. Yes, sir.

Q. And thence the combined stream flows southerly?—A. Yes, sir.

Q. Now go ahead. I will not ask you to locate any marks upon this map until you reach the point where you began your investigation of the 18th; and describe your course?—A. Thence we crossed the mouth of Clear Creek and left the road crossing the mouth of Clear Creek and followed up the left bank of the Stillwater stream in a general direction west to nearly the mouth of Trout Creek and thence up Trout Creek.

Q. And then?—A. Well, I didn't locate any coal lands on that day.

Q. You made no investigation of that Adams claim as you ascended Trout Creek?—A. No, sir.

Q. Then you ascended Trout Creek to what claim where you made the first investigation?—A. Along to the Tenino claim, and thence in a general northerly direction to a large tunnel, marked "Tunnel No. 1."

Q. Proceed now and indicate your course of travel and investigation for the 18th, showing the ground covered by you by marking it with a pen upon this map.—A. May I go back and refer to the meeting of Mr. Kennedy?

Q. I will give you an opportunity to do that if you will now go on and make the tracing.—A. And we went to the tunnel, and the safety lamp was prepared and Mr. Wingate and Mr. McGrath went into the tunnel, and while they were doing that I was taking some photographs; and after they came out with the safety lamp and said there was no gas in there we all went into the tunnel.

Q. Mr. Langille, I do not want to interrupt you, but the question I want now, before going into any other matters, now to be answered, is to have you project your entire course of travel, and then we will go back—project your entire course for that day on the map.—A. From this large tunnel then we went in a general northerly direction along Trout Creek across the Tenino claim to the cabin.

Q. The cabin, indicated by a black square on the map, is the north-west corner of the Tenino claim?—A. Yes; and then we returned to the Cunningham camp later in the day.

Q. The line you have drawn, beginning at the south end of the Adams claim and following up Trout Creek to the cabin indicated on the Tenino claim, mark the route of travel followed by you upon these claims on the 18th?—A. Yes, sir.

Q. Now, have you indicated upon this map, Identification No. 1, the coal exposures, or cuts, or tunnels, or other workings that you found upon the ground?—A. Yes, sir.

Q. All of them?—A. The location of a part of them was fixed on the 21st.

Q. And they are all indicated there?—A. They are all indicated there; yes, sir.

Q. And it shows on this map, that you saw on the 18th?—A. Yes, sir.

Q. You did not investigate as you passed over the Adams claim?—A. No, sir.

Q. But just walked across the claim, following the trail?—A. Yes, sir.

Q. Until you came to the Tenino claim?—A. Yes, sir.

Q. And your investigations were confined on that day to the Tenino claim?—A. Yes, sir.

Q. Now, I do not care to go into the matter on cross-examination, but as you have indicated a desire to refer to the meeting of Mr. Kennedy, I will now give you an opportunity to do so now, because I interrupted you before.—A. We met Mr. Kennedy between the Stillwater and South Creek, he had an Indian boy with him and he gave the Indian boy part of the paraphernalia he did not need and he accompanied us to the Tenino claim.

Q. Returning to the cabin again that night?—A. Yes, sir.

Q. Now, will you please describe by name and numbers upon this map, the claims that you examined and the locations of the examinations made by you the 19th?—A. We left the Cunningham camp—

Q. You need not repeat the route that you went over, just the numbers when you began your investigation for the day.—A. From the Cunningham camp we proceeded up a small stream in the general northerly and easterly direction to the point marked C 40, and thence continued in a general easterly direction up this stream and across the line of Lucky Baldwin—the east line of the Lucky Baldwin and the west line of the Agnes claim, and thence on to the Lyons; and thence in a direction more southerly and easterly across to the center of the line and thence in an easterly direction across the Lyons and Bedford claim—I wish to correct this line here [witness does so].

Q. Continue.—A. And thence across the Lyons claim, two-thirds of the way and thence in a northerly general and northeasterly di-

rection, to the northwest corner of the Bedford claim; to the southwest of the Bozeman and the northwest of the corner of the Bedford claim; and thence along the westward line of the Bedford claim to the southwest corner of the Bedford claim.

Q. Just pursuing a line due south, pursuing a course due south?—

A. Yes, I will call it a line there. And then from there in a general northeastern direction along the crest of the divide between Canyon Creek and Clear Creek to a cut marked C 45, 46, 47, and 48, to nearly the center of the Bedford claim; and then continued in a general northeasterly direction along the course of the divide and across the southeast corner of the Bozeman claim, the northwest corner of the Boston claim, to nearly the center of the Tulare claim, through cuts marked 49, 50, 51, and up to 55, inclusive. Thence in a general northeasterly direction across the Tulare claim to the United States location monument No. 7 on the north line of the Tulare claim.

Q. At cut marked 56?—A. At cut marked 56; and thence in a general northeasterly direction to the cut marked 57 on the Plutocrat claim near the southeast corner; and thence in a general westerly and northwesterly direction and across the Plutocrat claim to the east line of the Ludlow claim; and thence in a general westerly direction across the Ludlow claim to the trail which leads into the Clear Creek trail, and then down the Clear Creek to the Cunningham camp.

Q. Now, then, the route you have gone with pen and ink began at the Cunningham cabin and extended over the following claims, namely, the Lyons, the Bedford, Bozeman, Boston, Tulare, Plutocrat, and Ludlow, represents approximately the course of travel covered by you on the 19th day of August?—A. Yes, sir.

Q. And the characters represented along this line by the figures, C 42, and so on, represents the cuts and exposures of coal measures found by you on that ground?—A. Yes, sir.

Q. After leaving cut 57 on the Plutocrat, you proceeded directly across to the nearest intersection of the Clear Creek trail?—A. Yes, sir.

Q. And you did not attempt to make any further explorations?—A. No, sir.

Q. Who were with you that day, did you state? I don't remember.—A. No, I did not state.

Q. Do that then. Who were with you on that day?—A. Mr. Andrew Kennedy, Mr. Stoner, Mr. Wingate, and Mr. McGrath.

Q. Anybody else?—A. No, sir.

Q. Now on the 20th, please indicate by line drawn by you the route of travel and investigation made on the claims covered by you on that day? According to my record you began with the Ludlow claim.—A. Yes, sir.

Q. Begin with your line from the point near where you began your investigation and I will ask you to describe how you reached that point first?—A. In a general northerly or northeasterly direction up Clear Creek trail to the tunnel on the Ludlow claim.

Q. This tunnel is indicated on your map by the word tunnel?—A. Yes, sir.

Q. Now, commencing at that point is where your investigation began that day?—A. Yes, sir.

Q. Will you draw a line indicating the course covered by you that day, the 20th of August?—A. We came down Clear Creek to the heads of Falls, that was just east of the line.

Q. Between the Ludlow and the Newgate?—A. Yes; between the Ludlow and the Newgate; and then returned to the west line of the Ludlow claim, near to the west line of the Ludlow claim, and then back to the tunnel; and then from there we got back on the trail and back around to the line between the Ludlow and the Newgate claim noted "Small tunnel on the Newgate."

Q. Marked on that map with that cross?—A. Yes.

Q. Will you put the letter "T" there to indicate tunnel also?—A. Yes [witness does so].

Q. Continue.—A. And thence from there we came down Clear Creek and noted the cut marked C 39 on the Carlsbad claim, and cut marked C 38 on the Carlsbad claim, and then we returned to the Cunningham camp.

Q. Now, the only line you have drawn on the map, and that is sufficient for the purpose, is the line here at the top left corner of the Ludlow, and near the southeast corner of the Newgate, and the ground covered overlaps to some extent the ground covered on an earlier date as shown by the tracings you made here, doesn't it?—

A. Yes, sir.

Q. You have made no marks to indicate your route descending Clear Creek because you followed the trail?—A. Yes, sir.

Q. Did you stop to examine to see cuts 38 and 39 shown on the Carlsbad claim?—A. Yes, sir.

Q. This last you have described in your direct examination, I believe, isn't it?—A. Now—yes. Now, I might add that on the following day I went to fix the locations of cuts on Moore's Gulch.

Q. Which were examined on the previous day, as shown—A. Yes, sir.

Q. On this map by your route of travel on that day?—A. Yes, sir.

Mr. SHERIDAN. On the Deposit claim?

A. Yes, sir.

Q. Who was with you on the 20th?—A. Mr. Kennedy, Mr. Stoner, Mr. Wingate, and Mr. McGrath.

Q. Was Mr. Chezum with you on any of these days?—A. No, sir; I have never seen Mr. Chezum.

Q. Before proceeding further you have referred to Canyon Creek, have you room on this map to indicate the general course of Canyon Creek by drawing a line?—A. It is marked there.

Q. It is marked at the northeast corner on the plat?—A. Yes.

Q. Now, will you draw a line giving the general course of Canyon Creek approximately?—A. Yes, sir [witness does so].

Q. The ink line running along toward the eastward of the claim designated on this map as Cunningham coal claims, represents approximately what is called Canyon Creek?—A. Yes, sir.

Q. I believe that you have testified that Mr. Wingate was with you nearly all the time during your work on this claim?—A. Yes, sir.

Q. Which you have described in your testimony?—A. Yes, sir.

Q. Who is Mr. Wingate?—A. He was the man who was sent out and employed by the Forest Service to examine coal claims.

Q. What was his business? In other words, was he a coal man, experienced in knowledge as to coal mines?—A. Yes, sir; a coal engineer.

Q. Or expert?—A. He is a coal expert.

Q. Was he sent with you on this trip especially for the purpose of examining the coal measures and formations and the work of indicating the exposures of coal.—A. Yes, sir.

Q. You were not familiar with coal formations or coal lands?—A. No, sir.

Q. Had had no previous knowledge in that field?—A. No, sir.

Q. Or experience in it?—A. No, sir.

Q. Mr. Wingate was the only member of the Forestry branch of this exploration party who had such knowledge?—A. Yes, sir.

Q. Is Mr. Wingate here?—A. Not to my knowledge.

Q. Is he still in the government service?—A. I don't know that.

Q. Do you know where he is?—A. He is in Astoria, I presume; that is his home.

Q. Astoria, Oreg.?—A. Astoria, Oreg.

Q. What was the character of the weather during the time you were engaged in doing the work on these claims—the exploration work you have described?—A. We had some very good days, some very bright days, some that were rainy, and not; it never rained or stormed particularly hard during the time I was there.

Q. But it rained a great deal most of the days? At least, it rained more or less on most of the days?—A. More or less on part of the days; more or less, yes.

Q. Sometimes the rainfall is very heavy there, isn't it?—A. It is fair, but still while we were there it was not particularly heavy.

Q. Where do you say you were stationed at?—A. Ketchikan.

Q. Pretty familiar with the climate of southeastern Alaska?—A. I am.

Q. The annual rainfall in the Bering River district is upward to 150 inches annual precipitation?

Mr. SHERIDAN. Just a moment. I object to this question for the reason that it is immaterial and irrelevant in the present instance. If counsel or claimant desires to ask Mr. Langille what the rainfall was while he was examining these claims, we have no objection to that.

Q. Please answer the question. I will endeavor to make apparent what my purpose is.—A. The rainfall in that region is recorded as being upward of 190 inches. The station, I believe, is Orca, where the rainfall is taken and the record is kept.

Q. Do you recall what it is?—A. Why—it—

Q. It is about 190 inches, isn't it?—A. I think 153 inches is the average.

Q. Mr. Langille, what is the character of the surface of these claims. Now, I have no reference to the growth, the timber or the brush?—A. You mean the topographic?

Q. Yes, sir; I mean the topographic.—A. It is rough. The elevation of the Cunningham camp is about 159 feet, and Monument Mountain, on the Clear claim, in the center tier of the Cunningham group, is upward of 2,300 feet; I have forgotten its exact elevation.

Q. The entire region covered by the claims in question is broken up by gulches and streams?—A. Yes, sir.

Q. And the region between the gulches and streams are high and mountainous and descending to gulches on every side?—A. Yes, sir.

Q. What is the character of the surface of the soil or loose rock—the deposit?—A. There is not such a great deal on the ridges; there is considerable soil until you get on the very high ground.

Q. And the slides which have washed and have slid down—have they?—A. Yes; more or less.

Q. Did you find evidence there of the effect of the excess of the deposit of water in the form of rain or snow?

Mr. SHERIDAN. I object to that—

Q. And the melting snow causing numerous slides of the surface?

Mr. SHERIDAN. Just a minute. I object to that question except in so far as it may seek to elicit a layman's opinion of the ground condition. If it is sought to be of any value as expert testimony it is objectionable.

Mr. HUGHES. I only desire to say that the purpose of this is cross-examination of this witness, and I ask the witness no expert questions, and if this witness is competent for any purpose he is competent to tell what he saw there.

Mr. SHERIDAN. I agree to that.

The COMMISSIONER. Answer the question.—A. The region indicates considerable erosion from the precipitation and snowfall of the region.

Q. My question more directly calls for an answer as to whether or not the evidence you found on the ground indicated there had been many slides due to an excessive fall of water, either in the fall of rain or snow, or melting snow.—A. How extensive do you mean the slides were?

Q. The superficial or minor slides, sufficient to cover exposures made and sufficient to cover cuts or work done four or five years before?

Mr. SHERIDAN. I object to the question as being too general, and request counsel to indicate some particular cut or locality. The topographical condition of these entries are not the same in all parts. We have no objection to the witness being questioned about any cuts that he observed and what the formations or precipitousness of the ground was in that locality.

Q. Answer the question, please.—A. Of the cuts that were made the sides of them had sloughed some, but the excessive snowfall had supported them to a certain extent.

Q. A large part of the snows melt in the summer, don't they?—A. Yes, sir.

Q. Melt rapidly because of the long, hot days?—A. I would not say they melt so rapidly in these canyons; no, but on the slopes.

Q. On the high ground?—A. Yes.

Q. Now, isn't it true, Mr. Langille, that the conditions which you found there were such as to evidence the work might have been done five years prior to that time in the way of opening small cuts or doing work that would define the width of some exposures of coal, or the character of the coal for that purpose, and by subsequent sliding and erosion would have eliminated so that you would not see it by going over the ground?

Mr. SHERIDAN. I object to that upon the ground that the witness has not qualified to give a proper and reliable answer to any such question in view of the period indicated and the information required to properly answer such question.

Q. Please answer the question. We are not disputing the qualifications of the government witness in this particular.—A. Any cut of any size or consequence made in any coal vein would still show some evidence.

Mr. HUGHES. Kindly read my last question.

(Question read by the reporter.)

Mr. HUGHES. Adding to the question in any manner you did there?—A. Yes; some very small cuts may have been eliminated, the coal exposures would not have been.

Q. Couldn't the soil have slid down and filled the cut and then covered the coal exposures?

Mr. SHERIDAN. Objected to as argumentative.

Mr. HUGHES. I propound this question in the light of the conditions you saw there and have attempted to describe.

Mr. SHERIDAN. The question is objected to as argumentative. The witness has testified as to what he knows.

Mr. HUGHES. Proceed.—A. A good many of the exposures were in more or less firm formation.

Q. A good many that you saw?—A. A good many that I saw.

Q. But what I am trying to ask you about now is as to the conditions that may have existed, and under which cursory examination made by you may have been covered, so that you could not discover or see that. I will ask you whether the character of the country, the superficial deposits, and the amount of rainfall, and the evidence of those facts that you saw were such as to warrant the conclusion that there may have been work done five years before, and in passing over this ground as you did you could not observe it. That is true, isn't it?

Mr. SHERIDAN. Objected to for the same reason.

A. In passing over the ground alone without anyone to direct me I might have passed some of the previous workings.

Q. The conditions are such then that you are willing to admit that you would not necessarily see the work done five years prior to that time?—A. If the work was of any consequence I think evidence of it would still have been extant.

Q. If you had made a sufficient careful examination of the grounds to discover it, it would have been if it had been in existence; it would have been apparent, but not otherwise, would it?—A. I think in passing up any of the creeks or streams or valleys that we passed in any work done five years, if it had been of any consequence, evidence would have been still extant.

Q. What do you mean by "any consequence?"—A. Well, a cut of any depth.

Q. What do you mean by "cut of any depth;" be more specific.—A. I have noted cuts 3 or 4 or 5 feet deep—4 or 5 feet wide on the bottom—that was still in evidence.

Q. Yes; but they were usually in formations where the opportunity for caving in by slides was less; isn't that true?

Mr. SHERIDAN. Objected to as leading.

A. I don't think there was; no, sir.

Q. You have also noticed a good many that the cut filled, covered by slides; or was there any difference in the two situations you have just described?—A. In some places the more or less friable nature of the coal had slacked in on the coal, so that the full-size cuts were not discernible.

Q. You are not unwilling to say, if it be true, are you, that many locations where exposures were made on certain of these claims were so situated and of such a topographical character and if any slide had occurred it would have been more likely to have covered them up and in others of them; isn't that true?—A. There are some places where there were slides it would have covered up cuts had they been there, but they were few.

Q. Now, you have again referred, notwithstanding what transpired this morning, to the effect that you might have overlooked these if you had been going alone over the property. Do you know, Mr. Langille, that Mr. Chezum was the man who did the development work on these properties prior to their location, and that Mr. McGrath, who accompanied you gentlemen, did not go once upon these claims, except in surveying them, beginning for the first time at the time the surveys were made, late in 1904, the locations of these claims?—A. I did not know that Mr. Chezum did the work.

Mr. SHERIDAN. Objected to as incompetent, irrelevant, and immaterial. If counsel for claimant—

Q. Do you have any personal knowledge—

Mr. SHERIDAN. (Interrupting.) Excuse me—if counsel for claimant desires to introduce any testimony concerning who did this the proper way is to call a witness and have him testify.

Mr. HUGHES. I desire to refrain from making any comment, and I refrained myself this morning; but I desire to say now, in explanation of this question, the purpose of that is to meet what seems to me an apparent and improper effort on the part of the Government to leave the impression or convey the idea by the testimony of this witness, and of the one who preceded him, that Mr. McGrath, who was employed by them, was an agent of the company who had knowledge, and whose acts might reflect, or whose knowledge or admissions—I mean an agent of Mr. Cunningham—and whose acts might reflect, the knowledge or admission of Mr. Cunningham or the claimants who Mr. Cunningham represents.

The COMMISSIONER. Answer the question.

Mr. HUGHES. I was starting to ask a question when I was interrupted.

Q. Do you have any knowledge, personal knowledge, as to the nature of any employment of Mr. McGrath by Mr. Cunningham, acting for himself or for any other claimants?—A. No; I have only Mr. McGrath's statement for what work he did.

Q. You have no information from Mr. Cunningham, or from any claimants relative to who had done this work or had any information regarding it?—A. No, sir.

Q. You did not seek information from Mr. Cunningham or any other of the claimants upon that subject before going there and employing Mr. McGrath?—A. No, sir.

Q. Your employment of Mr. McGrath was merely for your own convenience and assistance in going over the work, and not with any idea of procuring any information from the claimants respecting what they had done?—A. No, sir.

Q. Now, did you collaborate in any way with the other persons of your party, commissioned as you have described by the Forestry Department to do this work?—A. Yes, sir.

Q. Did you collaborate with them in the making up of your notes?—A. No, sir.

Q. Did you collaborate with them in the making of your reports?—
A. I have.

Q. Who besides Mr. Wingate was detailed and assisted in any way in doing this work?—A. Mr. F. E. Ames, who is the ——— for the Forestry Service.

Q. Where is Mr. Ames himself?—A. He is in Portland.

Q. Do you know whether Mr. Ames made any report?—A. Yes, sir.

Q. A written report?—A. Yes, sir.

Q. Do you know whether Mr. Wingate made any report?—A. Yes, sir.

Q. A written report?—A. Yes, sir.

Q. Did you see his report?—A. Yes, sir.

Q. Did you aid or assist him in making that report?—A. No, sir.

Q. Or collaborate with him on it?—A. No, sir.

Q. In your testimony here, Mr. Langille, has it been based entirely upon your own investigation and observations?—A. Yes, sir.

Q. Has it been influenced in any way by the investigations or observations of Mr. Kennedy, Mr. Ames, or Mr. Wingate?—A. No, sir.

Q. You have limited your testimony to what you yourself did or you yourself saw?—A. Yes, sir.

Q. And you wish to be understood at least as having done so?—A. Yes, sir.

Q. And do not intend to have your testimony construed as reflecting any information received by you from either of these men or anyone else who accompanied you on any of these days?—A. No, sir.

Q. And that would also include Mr. McGrath?—A. Mr. McGrath was employed by me as a guide.

Q. Now, Mr. Langille, did you make notes from day to day upon the ground of the observations you made and the investigations you conducted and your measurements, and so forth?—A. Yes, sir; as I read my notes to-day.

Q. I am asking you whether you made notes while you were upon the ground?—A. Yes, sir.

Q. You have been referring to a notebook in giving your testimony in chief and occasionally upon cross-examination?—A. Yes, sir.

Q. Was that notebook taken with you and kept with you while you were doing that work upon the grounds, and did you make in that book while you were upon the ground and at the time of the various transactions entries therein concerning such matters?—A. Part of these notes are made in this celluloid book that I have here and transcribed in the evening in the camp. To save the notebook, the paper notebook that I carried, which is more or less wet, I use the celluloid book and transcribe the notes into this paper book in the evening.

Q. Did you transcribe your notes each evening or did you transcribe them subsequently?—A. No; I tried to do it each evening, because there are only a few leaves in the celluloid book, and it won't hold much.

Mr. SHERIDAN. You mean the celluloid book?—A. Yes; this book [holding up book].

Q. Have you made any changes or alterations in the notebook to which you refer?—A. No, sir.

Q. In your examination here?—A. No, sir.

Q. Since that time in the month of August, 1909?—A. No, sir.

Q. When you made this examination?—A. No, sir.

Q. I have observed you doing some writing in one or the other of these notebooks in court. That had nothing to do with the particular notes from which you testified?—A. Do you refer to yesterday?

Q. Yes.—A. I made a note I was called to the stand.

Q. I see. I take it that the entries that you made yesterday in this had nothing to do with the notes from which you testified?—A. Oh, no.

Q. And in no way affect or modify these notes?—A. No; you may see them if you wish.

Q. No; I am content to take your answer, but I merely ask it and I meant no reflection, but simply for information. Have you depicted upon this map, as drawn by you, the boundaries of the forest reserve?—A. The east boundary; yes.

Q. What lies west of the line drawn on this map, and marked with a legend: "East boundary Chugat National Forest Reserve?" Represents the eastern boundary of that portion of the Chugat Forest Reserve which embraces many portions of the coal claims in controversy here?—A. Yes, sir.

Q. These claims lying to the west of that line are the ones in the forest reserve?—A. Yes, sir.

Q. And those lying to the east of them are entirely without the jurisdiction of the forest reserve?—A. Yes, sir.

Q. Did you have any instructions to examine those claims or did you do it voluntarily?—A. Why, I saw the letter of instructions to Mr. Hames from Mr. Cecil.

Mr. SHERIDAN. May I add for the information of counsel that it is customary where an entry or group of entries are partially within the reserve and partially outside or otherwise on the public domain for the different branches of service to cooperate with each other and mutually aid in the examination of the entire tract which is included.

Mr. HUGHES. The witness having done the work, I thought perhaps the witness would be able to give a reason he did it, was all. I was not intending to put counsel on the stand.—A. Yes; we were instructed to cooperate with Mr. Kennedy in the examinations of the claims, and if I remember right the wording of the instructions, Mr. Kennedy was to have charge of the work.

Q. Did you work under the instructions of Mr. Kennedy and act under his direction in the work that you did and in which you have described in your testimony?—A. No, sir; Mr. Kennedy was not there when I first reached the group of claims, and I proceeded on my own initiative.

Q. Mr. Kennedy was only with you on three days?—A. Only on three days.

Q. The map to which you have been alluding is one you have made for purposes of illustration, Mr. Langille?—A. Yes, sir.

Q. And is approximately correct as to the lines of the claims and the locations of the gulches and of the other characteristics upon it—are descriptive of what you found?—A. Yes, sir. May I state that this short line was taken from the surveyor-general's plat.

Q. Yes. You have only referred to this map for the purpose of making more intelligible the testimony you have given?—A. Yes, sir.

Q. And not as indicating that all the lines here are correct by surveys made by you or that you desire to testify to?—A. No, sir.

Q. You have made it simply as a reasonably correct approximation of the conditions existing there and shown upon this map?—A. Yes, sir.

Q. For the purpose of illustration?—A. Yes, sir.

Mr. HUGHES. Now, I desire to say to the commissioner that I have referred to this map in a cross-examination of this witness because he referred to it in his direct examination, appropriately enough, I think; and in doing it on cross-examination I have been led to that course believing it would simplify the cross-examination and make it easier for the judicial tribunal reading his testimony to understand this application to the various claims, and have so used it with a view of abridging his cross-examination and making his cross-examination intelligible. Therefore I now offer this map for the purpose of illustrating his testimony and explaining the matters referred to in the testimony of the witness and point it out and marked on the map.

Mr. SHERIDAN. We are perfectly willing that it should be admitted in evidence for the purpose named.

The COMMISSIONER. It may be admitted in evidence, and marked "Claimant's Exhibit 1."

(Paper marked "Claimant's Exhibit No. 1" for identification admitted in evidence.)

Redirect examination by Mr. SHERIDAN:

Q. Will you please state whether or not on your examination of these claims, as set out by you in your testimony, you had in use any instruments for the purpose of locating yourself and verifying the corners and things of that sort?—A. Yes, sir.

Q. What were those instruments?—A. I had a Bruton pocket transit of the Forest Service, a standard compass; and one day I carried a chain. The day that Mr. Ames was with us we used a chain.

Q. Did you or not use these instruments in locating the cuts and corners as stated and set out on the map introduced in evidence?—A. Yes, sir.

Q. What experience have you had in handling instruments of that sort?—A. An experience of six years in the Forest Service.

Mr. HUGHES. If the commissioner please, counsel went into all of this subject on their direct examination very fully, and I have not challenged this in the cross-examination, and I do therefore object for the reason it is not proper redirect examination and is mere repetition and unnecessarily encumbers the record.

Mr. SHERIDAN. A good many of the questions which counsel for claimant have propounded seemed to question the accuracy of the statements of the witness, and I propose to emphasize what knowledge he had of the accurate handling of these instruments.

Q. You may state, Mr. Langille, what the extent of your experience has been in handling the instruments of that sort.

Mr. HUGHES. I make the same objection.

A. I have used them in my original surveys.

Q. Over what period of years have you had experience in that connection when you were handling such instruments?

Mr. HUGHES. I make the same objection.

A. Six years in the Forestry Department.

Mr. HUGHES. That is simply a repetition of what he has already testified to.

Q. In handling the instruments referred to?—A. Yes, sir.

Mr. SHERIDAN. Before dismissing the witness from the stand, unless counsel for the claimant should desire to ask any further questions about the matter, I wish to say that, aside from whatever instructions Mr. Langille had with reference to the examinations he made of this group of entries, there are general instructions of the department set out in the use book and in the field works and subsequent circular letters of the Forest Service which also had a great deal to do with the nature of his work, and which we beg to advise the counsel for claimant fully covers these cases where extending over from the forest reserves onto other parts of claims.

The COMMISSIONER. Are there any further questions to be asked?

Mr. GRAY. We do not wish to cross-examine Mr. Langille any further. That is all.

Mr. SHERIDAN. I now desire to call Mr. S. N. Stoner, special agent of the Land Office, as a witness for the Government.

SYDNEY N. STONER, a witness produced by the Government, being first duly sworn by the commissioner, testified as follows:

Direct examination by Mr. SHERIDAN:

Q. State your name, age, and occupation.—A. Sydney N. Stoner; 33 years old; special agent of the General Land Office.

Q. How long have you been a special agent of the General Land Office, Mr. Stoner?—A. Since April, 1907.

Q. During your service as a special agent of the General Land Office have you been called upon to make examination of any of the entries now under investigation, otherwise described as the Cunningham group of coal claims in Alaska?—A. Yes, sir.

Q. What instructions did you have for this purpose?

Mr. HUGHES. Wait a minute. If those instructions were in writing, they would be the best evidence. I understood you to advise me that this witness was to testify concerning and respecting the map, and the portions of the improvements, and not with respect to investigation upon the ground.

Mr. SHERIDAN. He was on the ground, and I wish to bring him to the ground before I start on the map—bring him up there properly and officially.

A. I was verbally instructed to go to Alaska and assist in the examination of these entries.

Q. From whom did you receive those instructions?—A. Mr. L. R. Glavis, chief of field division at that time.

Q. Did you go to Alaska and make the examination as instructed?—A. Yes, sir.

Q. Now, give us generally, Mr. Stoner, what work you did in connection with this investigation; and with whom you cooperated, if with anyone in making it?—A. Well, I was instructed to cooperate with Mr. Kennedy, and assist him in the investigation and examination of the coal fields. My duties were to locate the various outcroppings and various other features of the country, and make a plat of it for his guidance in making his report on the matter.

Q. Have you ever had any experience in map making and surveying?—A. Yes, sir.

Q. State briefly what it has been.—A. I was employed by the Geological Survey from September, 1895, until April, 1907; the last seven or eight years of that time has been making maps. The other time was as a surveyor, and also making maps.

Q. What has the nature of your service been since you have been special agent of the General Land Office in that respect?—A. Well, I have not made very many surveys since I have been with the Land Office, except a few.

Q. Have you been employed in the making of maps?—A. Yes; and making reports on unlawful inclosures and matters of that kind. I would make the survey and then make a map from the notes.

Q. How many days, as near as you can recall, were you engaged in making this examination or assisting in the making of the examination of these entries?—A. About eight days, I think. Six days at one time and two days at another and three days at another; about nine days.

Q. Did you, as a result of your examination, prepare or aid in preparing a map showing the result of this examination of that field?—A. Yes, sir.

Q. I now hand you Government Exhibit No. 35 and ask you to state if this be the map which you assisted in preparing?—A. Yes, sir.

Q. Are you the same S. N. Stoner whose name appears on the legend on this map?—A. Yes, sir.

Q. With reference to this map, did you locate or assist in locating the corners on the entries set out in this map?—A. Some of them.

Q. With whom did you cooperate for that?—A. Mr. Kennedy and Mr. Langille and other members of the Forest Service who were with us three days.

Q. During the three days that the members of the Forest Service were cooperating with you and Mr. Kennedy, which members of the Forest Service assisted you in the work, if any?—A. Mr. Langille and I both located the corners together.

Q. What instruments did you have for this purpose?—A. I had a compass.

Q. Can you point out to us the corners appearing on this map that were located by you on the occasion of this examination?—A. You mean all the corners on the entire map or just the time I was with Mr. Langille?

Q. By you located during this examination.

Mr. HUGHES. That he, himself, located?

Mr. SHERIDAN. Yes.

A. Well, I located the corner common to the Tenino, the Adams, the Albion, and the Agnes claims, and the witness corner to the Maxine and Deposit, Agnes and Candelaria claims; and the corner, the south corner, between the Avon and the Lucky Baldwin; and the corner common to the Socorro, Clear, Carlsbad, and the Calais; and the corner of the Calais, Bozeman, Lyons, and Bedford.

Q. You mean the corner of those common to those claims?—A. Yes; the corner common to those, and the south corner common to the Lyons and the Bedford, and U. S. L. M., No. 7.

Q. Where does that monument appear?—A. It appears on the line between the Plutocrat and the Tulare, and that is all the corners I went to myself.

Q. Did you, or did you not, assist in the location of any other of the cuts or tunnels appearing on these entries?—A. Yes; I ran from these cuts. I ran traverse lines and located them in reference to the various corners.

Mr. HUGHES. That is, he don't mean to all of them.

A. I mean to the corners I mentioned.

Q. Can you now point out to us the cuts to which you did run such lines? Take up one entry at a time and indicate for us the cuts you have located?—A. All of the cuts on the Tenino and the Collier and the Adams were located by reference to the southeast corner of the Tenino claim.

Q. Located by you?—A. By me; yes.

Q. What others?—A. The locations appearing on the Agnes claim were located by me with reference to the southwest corner of the Agnes claim, and also the southeast corner of the Tenino, except—well, the witness corner to the Maxine and Octopus and Agnes claims; from them the locations appearing on the Maxine and the Octopus and the Candelaria were located from that.

Q. By you?—A. By me; yes. Now, the corner to the Frick, Syndicate, Lobster, and Socorro—that corner I did not go to; I did not stand on top of it—I was within about 200 feet of it; I could see the little knob it was on, but I did not go right up to it. The guide we had informed me that it was there.

Mr. GRAY. I object to that, and move that it be stricken out as hearsay.

Mr. SHERIDAN. Mr. Stoner, just testify to what you did yourself. We do not want the testimony of what other parties told you.—A. Well, the location on the Carlsbad claim I located with reference to the northeast corner of the Carlsbad claim.

Q. It was located by you?—A. Yes—that is to say, stations 1, 2, and 3, on the Carlsbad.

Q. On the Carlsbad?—A. On the Carlsbad. The stations in the southwest corner of the Carlsbad were located with reference to the south corner between the Avon and the Lucky Baldwin.

Q. Was this location made by you?—A. Yes; the locations made on the Lucky Baldwin were made with reference to the southwest corner of the Lucky Baldwin.

Q. Also by you?—A. Also by me. The locations indicated on the lines were made with reference to the southwest corner of the Lucky Baldwin claim.

Q. Also made by you?—A. Yes, sir.

Q. I mean the locations on the lines were made by you?—A. Yes, sir.

Mr. HUGHES. By that I presume you mean the surveys which he ran—any line to fix the location on the ground, or a cut?

Mr. SHERIDAN. Yes.

Q. While making this examination in the field did you, or did you not make any notes at the time you made your surveys and fixed your locations?—A. Yes, sir.

Q. Did you preserve those notes?—A. Yes, sir.

Q. Have you those notes with you?—A. Yes, sir.

Q. You may refer to them for refreshing your memory for the purpose of your testimony.

(Witness does so.)

A. I also wish to state that I located the corner of the Bozeman, Boston, Bedford, and Belmont.

Q. The corners to these?—A. Yes, sir.

Q. With regard to the station appearing on the Bedford, did you locate these?—A. Yes, sir.

Q. Did you locate the stations on the Boston?—A. Yes, sir.

Q. Did you locate the stations on the Tulare?—A. Yes, sir.

Q. Did you locate the stations on the Plutocrat?—A. Yes, sir.

Q. Did you locate the stations on the Ludlow?—A. Yes, sir.

Q. Mr. Stoner, point out to us what stations, if any, on this area that you did not locate or assist in locating.—A. Well, I did not locate the stations on the Clear claim, nor those on the Newgate, and none of those on the Syndicate; and not all of those on the Ludlow.

Q. How many of those on the Ludlow did you locate, and call them by their numbers as appearing on this exhibit?—A. I located one, No. 77.

Q. The number of the station?—A. The number is 77.

Q. Was there any others on the area shown on this map that you did not locate other than those just mentioned by you?—A. Why, I did not locate stations 33, 34, and 35.

Q. Where are they located?—A. Thirty-three is located on the southwest corner of the Carlsbad; and 34 and 35 in the southeast corner of the Deposit.

Q. Are there any other stations anywhere set out on the area covered by this map that you did not locate?—A. The stations set out on the Socorro were located with reference to each other by me. There reference to the corner was located—approximately located—by me.

Q. To what corner do you refer?—A. To the corner of the Frick, Lobster, Syndicate, and Socorro.

Q. The common point?—A. Yes.

Q. Have you now called our attention to all of the stations on this area which you did not locate?—A. Yes, sir.

Q. You stated, I believe, this map you assisted in preparing?—A. Yes, sir.

Q. Under whose direction did you prepare that map?—A. Mr. Andrew Kennedy.

Cross-examination by Mr. GRAY:

Q. You don't mean to say, Mr. Stoner, that you ran traverses from these corners that you have stated that you found to these various stations in the testimony of the former witness?—A. Yes, sir.

Q. To all of them?—A. Yes, sir.

Q. How long were you engaged in doing that? How many days?—A. About eight.

Q. About eight days?—A. Yes.

Q. Part of that time you remained in camp?—A. No, I mean—

Q. You were actually engaged eight days in that work?—A. Yes, I think so.

Q. Give me the date.—A. It was on July 16—no, I mean the 26th, 27th, and 29th; and then on August 18, 19, and 20.

Q. That is only six days?—A. Yes.

Q. How many stations did you locate in that time?

Mr. SHERIDAN. I submit that is a matter of mathematical calculation. He stated every station on the map that he did not locate, and it is easily ascertained by counting them up.

Mr. GRAY. Well; let him do the counting.

A. That would be 88 stations; 86 stations.

Q. And that is all that you locate upon the map here?—A. Yes, sir.

Q. And that is all?—A. Yes, sir; I think so.

Q. Now, what kind of an instrument did you have, Mr. Stoner?—

A. A compass.

Q. What kind of a compass?—A. About a 4-inch angle and a Jacob staff.

Q. You did not have any instrument with you other than your compass?—A. I had that compass.

Q. That is all you had, and you did not have a chain?—A. No, sir.

Q. You stepped off that distance or judged it?—A. Yes, sir.

Q. Guessed at it?—A. Well—

Q. Let me see that survey you made. From that corner 282, let us see your notes from that corner. You do not keep them in a regular notebook?—A. No; they are just made up evenings, and I kept them in this book.

Q. Now, you started from the corner common to the Bozeman, Calais, Lyons, and Bedford and ran a course south 40° west a few feet, didn't you?—A. That is not 282.

Q. On the line then running from there north 28° east 600 feet?—A. Station 283.

Q. Did you just guess at it?—A. No; I paced it. It was along the top of a ridge.

Q. In a direct line?—A. Yes, sir.

Q. It was pretty rough ground there, wasn't it?—A. No; I think the top of the ridge was very even.

Q. Didn't take levels at all?—A. No.

Q. Or the angle of the pitch of the hill?—A. The compass was approximately correct.

Q. Now, going over to the corner of the Bozeman, Calais, Lyon, and Bedford, the first course you took from there ran to station 276, was south 40° west 1,000 feet, wasn't it?—A. 276? Yes. That was done by triangulation. I took two angles, of two known points.

Q. What other point?—A. The other corner.

Q. Let us see where these two known points were?—A. Oh, no, that was wrong.

Q. You took a course 1,000 feet south 40° west from this common corner?—A. Yes, sir.

Q. Did you go over that ground between there and that point?—A. Yes, sir.

Q. And in going over it you rose a distance of several hundred feet?—A. No; it is practically level. The contour line.

Q. Did you follow the contour around or did you go over the hill?—A. These are 50-foot contour intervals.

Q. Now, just answer the question. Did you follow the contour or did you follow over the hill?—A. Only to the corner, and then started back.

Q. How do you mean? You went south 40° west 1,000 feet from this corner; and in doing that you had to climb a distance of approxi-

mately 350 or 400 feet; you had to rise that elevation to go over the hill and go down on the other side?—A. No, sir.

Q. Doesn't the contour show that, practically?—A. 300 feet, possibly.

Q. And as a matter of fact you followed around, didn't you?—A. No. As a matter of fact it was a gradual descent there.

Q. Do you mean a gradual ascent?—A. No; you are descending from that.

Q. Then this is a gradual descent?—A. Yes, sir.

Q. And then you went down in that direction 1,000 feet?—A. Yes, sir.

Q. And down the hill about 300 feet?—A. Yes, sir.

Q. And then you took a course south 20° west 500 feet; and you approximated that distance, didn't you?—A. No, sir; I paced it.

Q. That is all pretty rough in there and covered with brush?—A. No, sir; it is a sort of a swell in there; practically level.

Q. Isn't that on the hill that breaks from an elevation of approximately 2,000 feet down to Trout Creek?—A. Yes, and there is a branch that crosses in there on this point.

Q. The contour lines don't show that, do they?—A. It shows, yes.

Q. Several hundred feet difference in elevation between these points that you ran your lines on?—A. I did not make the contours; and as a matter of fact the contours are not correct.

Q. Then what did you put them on there for?—A. I put them on there to show the drainage and so on.

Mr. HUGHES. What is the answer?

(Answer read by the reporter.)

Q. You don't pretend they are correct?—A. Not by those of our surveys.

Q. Did you have an aneroid with you?—A. No.

Q. How do you know they are not correct?

Mr. SHERIDAN. May I interrupt—

A. I mean the shape of it is not correct. The elevations might be correct, but the shape is not correct.

Q. Did you make any notes of the shape, or make any contours of your own, or are you just going from your memory?—A. No, I did not make any notes at the time. I saw the contour map at the time.

Q. Did you have it with you on the ground?—A. Yes, sir.

Q. Did you make any memorandum of it as to where the contours were incorrect?—A. No.

Q. And in making that map you did not correct it as you found it?—A. No, I took the contours, taken from the geological map.

Mr. SHERIDAN. I want, for the sake of definiteness of the record, to locate the approximate vicinity of these comments.

Mr. GRAY. I have indicated that, Mr. Sheridan.

Mr. SHERIDAN. Do you mean the common corner of the Bozeman, Nedford, and Lyons?

Mr. GRAY. I must object to your interfering in my examination of Mr. Stoner. I am not misleading him. You know what I am speaking of?

A. Yes.

Q. And then you took a course north 78° west, and 1,000 feet to station 275?—A. Yes, sir.

Q. And on these three stations, what is the elevation?—A. The first elevation of 1,000 feet, approximately.

Q. Or a little less?—A. Yes, sir.

Q. And in these three courses, Mr. Stoner, you had to descend from an elevation of 2,000 feet to an elevation of 1,000 feet?—A. No, sir; it was—the contour in fact here says the corner is 1,300 feet.

Q. One thousand three hundred feet and 1,000 feet, or a little less than 1,000 feet?—A. Yes, sir.

Q. Well, as a matter of fact, you don't pretend that was an accurate survey? You are just attempting to give approximately where these points were?—A. I give it as near as possible.

Q. From that kind of a survey?—A. It was not exact, as close as if I had chained it; no, sir.

Q. And that was the character of the work you did all over the field at that time, wasn't it?—A. Yes, sir.

Q. And you took approximate distances of 300 and 500 and 1,000 feet?—A. By pacing it.

Q. Now, you say these points you located on the Socorro claim were with reference to each other and approximately with reference to the southeast corner of the Frick?—A. Yes, sir.

Q. That is the corner of the Frick you never went to, isn't it?—A. Yes, sir.

Q. You say that these stations in the southwest corner of the Carlsbad and the southeast corner of the Deposit you fixed with reference to the common corner of the Lucky Baldwin and the Avon claims, the common south corner of the Lucky Baldwin and the Avon; is that correct?—A. I fixed them in this way—

Q. Well, now, answer the question, if you please.

Mr. SHERIDAN. I submit that the witness should be allowed to answer.

Mr. GRAY. He has to give me an unequivocal answer on cross-examination.

Mr. SHERIDAN. He has not given it yet.

Q. I shall insist upon the answer. Just say yes or no and then you can explain.—A. Yes.

Q. Now, then, if you have an explanation to make you may make it.—A. I located that station 36 which is on the Avon claim myself from a traverse based on that corner between the Avon and the Lucky Baldwin. Stations 35, 34, 33, and 32. We made up another and I plotted the courses and distances on.

Q. Why didn't you establish that point with reference to the nearest corner?—A. I didn't know where it was.

Q. Instead of the corner on the Deposit and Carlsbad?—A. I did not know where it was.

Q. With your instruments you could have located it with the map?—A. I did not have the map at the time, and I could not tell.

Q. You knew it lay north of the common south corner, didn't you?—A. Yes; I knew it.

Q. And with your instrument you could have found it, couldn't you, and gotten your measurements?—A. Yes; if I had plotted the points at the time or had worked out the latitudes and departures, but I didn't do that. I did not know it was near that corner until I plotted it.

Redirect examination by Mr. SHERIDAN:

Q. You stated that you were engaged in this examination for six days, I believe, Mr. Stoner?—A. Yes; finally. That is right.

Q. During what month or months or what year?—A. Three days in July and three days in August, 1909.

Mr. SHERIDAN. I desire to recall Mr. Langille for just a few questions.

W. A. LANGILLE, being recalled, testified as follows:

Direct examination by Mr. SHERIDAN:

Q. Now, just recall, Mr. Langille, that you are under oath. I wish to ask you, in connection with Claimants' Exhibit No. 1, what means you had for fixing the elevations which are stated on this map before you?—A. I had an aneroid barometer reading to 5,000 feet, with a minimum of 20 feet.

Q. You verified your elevations by your barometer on the ground?—A. Yes, sir; on the ground.

Q. And noted them in your book?—A. Yes, sir.

Q. And these are the same readings that you now have on this map?—A. Yes, sir.

Mr. HUGHES. No measurements are given on the map, except as taken by you?—A. No, sir; except there is one contour line.

The COMMISSIONER. I would like to ask you a question.

Mr. HUGHES. Pardon me, if your honor please, for a moment until I finish in that same connection.

Q. (By Mr. Hughes). In representing the elevations, you have marked elevations in terms indicating the elevation?—A. Yes, sir.

Q. And you do not refer to contour lines unless there is a mark indicating elevation?—A. No; there is only one contour line here, and I marked that on the map to indicate the approximate elevation of the merchantable forest.

Q. Of what?—A. Of the merchantable forest, and that was taken from the topographic map of the Geological Survey.

The COMMISSIONER. At the time you first met Mr. McGrath, you say you met him in the Cunningham cabin?—A. Just short of the Cunningham cabin, while we were walking up there.

Q. Did you go into the cabin?—A. Yes, sir.

Q. Was it furnished for living purposes?—A. Yes, sir.

The COMMISSIONER. That is all I wish to ask.

(And thereupon this inquiry was adjourned until November 24, 1909, at 10 o'clock a. m.)

NOVEMBER 24, 1909—10 A. M.

Appearances: Hon. William J. McGee, United States special commissioner; Mr. James M. Sheridan and Mr. William B. Pugh, counsel for the Government; Mr. E. C. Hughes and Mr. John P. Gray, counsel for the claimants.

Mr. SHERIDAN. We now wish to serve notice on counsel for claimants that in Government Exhibit 10 reference is made to certain deeds that have been deposited in escrow with the Union Trust Company, of Spokane, Wash. We wish to advise counsel that it is our

intention to call a witness or witnesses whose names are now unknown to us for the purpose of producing these deeds and accounting for them, and for the purpose further of establishing by whom they were executed and in favor of whom, and all the contents therein set out. If counsel cares to proceed with the taking of testimony for the claimants at this time, and to defer the production of that testimony we have referred to until our adjournment to Spokane, Wash., we shall agree to such proposition.

Mr. HUGHES. I understand counsel for the Government to intend at this time to say, with the exception of the testimony referred to by him in the statement just made, the Government is now ready to rest its case provided we will proceed, with the understanding that they may be at liberty to introduce the specific testimony to which reference has been made on reconvening at Spokane, but otherwise resting the Government's case.

Mr. SHERIDAN. We must first ask a question of counsel for claimants, whether or not it be the intention of counsel to call all of the entrymen and their assignees in this inquiry?

Mr. HUGHES. I will say frankly to counsel we can not determine that question as yet. We do not know whether we can secure the attendance at the time of taking testimony of all the parties because they are widely scattered. Until we have examined carefully the proof, the documentary proof offered by the Government, we can not know whether it will be necessary to call all of the entrymen and their assignees, but it is our intention to introduce all of the proofs, by testimony of entry men or otherwise, that are available to us for the purpose of meeting any evidence that appears to us to have been produced in this case tending in any way to establish the charges of the Government.

Mr. SHERIDAN. Will counsel for claimants assure us that they will make all reasonable efforts to produce all the entrymen and their assignees?

Mr. HUGHES. Well, I desire to state, Mr. Commissioner, that it seems to us that any request of this kind, or any attempt on our part to answer such general request would be entirely contrary to the usual mode of procedure in determining a cause on trial or a controversy judicial in its character. We have not had opportunity to confer with more than four or five of the various entrymen at this time. They are scattered over different parts of the country and we expect to endeavor to see them, as far as possible to do so, but the case of the Government should be made and it should then be left to our judgment as counsel representing defendants in this case to determine not what evidence counsel for the Government may think constitutes a defense but we, as attorneys, are responsible to our clients for what in our best judgment constitutes a defense; and that we are not able at this time to say, even if it were proper for counsel to ask us, to make such a statement, because we are not sufficiently possessed of the evidence for the reasons I have enumerated, not having had opportunity to confer with the various entrymen or their assignees. The majority of them we have not yet been able to meet at all. We have not yet had opportunity to examine all of the documentary evidence, that under the proofs and stipulations are now in evidence on behalf of the Government, and until we have done that we can not say what evidence we shall deem necessary to offer. I want to say this, we desire to confine our evidence to the precise issues that it

seems to me are tendered in this issue in this controversy by the charges and proof and not encumber this record with matters which, in our judgment, would not be pertinent in these issues and proof.

Mr. SHERIDAN. We desire to state that one of the matters set out in these charges is lack of good faith. The best way to establish, in our opinion, whether or not they were in good faith is to call all of the parties that had anything to do with these transactions; certainly the entrymen and their assignees. Counsel asks whether we intend to rest our case, save and except as indicated with reference to certain deeds which have been placed in escrow in a bank at Spokane, Wash. Our answer must necessarily depend on whether or not counsel are going to call the entrymen and their assignees. It is our purpose, and we assume it is the purpose of counsel for claimants, to make this as much of a personal investigation as possible, open and above-board, and call every one connected with it. We desire assurance from counsel that they will do what is in their power to this end, and that they will assure us that they will call all such entrymen and their assignees, if it is possible to do so.

Mr. HUGHES. Now, Mr. Commissioner, it must be apparent to counsel that inasmuch as it has already been shown in the records of this case, which have been made a part of the record, that at least six of the entrymen have transferred their claims since their protecting of their proof and the payment of their money and the receiving of their final receipts and patent certificates, and they have no further interest in this controversy. Some of them are widely separated in their residences or present place of abode from the point at which the inquiries are expected to be had that we will have no power to compel the attendance of such persons. Not having had opportunity to have any personal communications with them, we do not know whether they will voluntarily appear. If it were proper for counsel of the Government to insist upon an answer at this time to these questions it would be impossible for us to answer them. In all the stages incident to final proof, and in all subsequent investigations by the Government, their own records disclose the documents the Government has introduced; likewise disclose that these entrymen have at all times been ready to afford information to investigators appointed by the Government to make investigation with respect to these entries, and any and all of them. Notwithstanding the Government has formulated specific charges of fraud and has now instituted a judicial inquiry, and designating counsel to prosecute that inquiry, and are prosecuting it according to the forms of law and under the course of procedure in such cases defined by the Department of the Interior, we, as attorneys (referring to Mr. Gray and myself), have been employed now by the defendants or claimants herein to represent them in this judicial inquiry, which should progress according to well-established practice in court and all judicial inquiries, and we should be at liberty to exercise our judgment and not the judgment of counsel representing the Government as to what the issues are and the proofs we should offer in this proceeding on behalf of the defendants. Now, we will probably disagree with counsel as to what the proofs offered by the Government establish. We will probably disagree as to what are the issues of facts, feeling as we do that certain issues tendered by the Government present issues of law alone. We will be responsible, not to the

Government in this proceeding, but to our clients. It does not seem to me that the Government ought to ask any such question as this of us, and in addition to that I beg to state that we are not at all prepared to answer it, because we have not had opportunity to make all investigation necessary to enable us to determine what proofs it will seem to us necessary to offer on behalf of these defendants in the progress of this hearing. By the course of procedure in this, as in all judicial inquiries, the prosecutor should offer his proofs and rest before the defendants are asked to offer theirs or to outline their defense.

Mr. SHERIDAN. I do not agree with the statement of counsel that this matter should be conducted in the same way that cases are tried in a court. A perusal of the regulations of the Department of the Interior, where they refer to the General Land Office, and also to the decisions of the General Land Office, will show such is not the case clearly. These inquiries are necessarily in their nature equitable and broad, and anything that tends to show good faith or lack of good faith, when such is made an issue, should be produced and placed upon record. I do not see any difficulty in the way for counsel for claimants stating whether or not they are willing to assure us that they will call all the entrymen and their assignees, if it is possible to do so.

Mr. HUGHES. Well—

The COMMISSIONER. Will counsel come to the commissioner's desk? (Counsel came to commissioner's desk and a consultation was held.)

Mr. SHERIDAN. I make this statement for the reason that I was asked by counsel if I proposed to rest the Government's case save and except such testimony as would be produced at Spokane, Wash., concerning the deeds placed in escrow as already herein described. I now state that it is our purpose to have the testimony of all the entrymen and their assignees in the entries under investigation. If counsel for claimants call them, of course it will not be necessary for us to do so; but if counsel for claimants do not call them, we reserve the right to do so. If counsel for claimants are willing that this understanding should exist and continue throughout this inquiry we are willing to state that with such understanding the Government is willing to rest its case save as regards the deeds in escrow in Spokane, Wash., already referred to, and the production of such entrymen and their assignees as may not be called by counsel for claimants, and such other witnesses, if any, as developments may show us to be necessary, but of which we have now no notice. We are willing, furthermore, for the purpose of enabling counsel for the claimants to answer this proposition that they may take such time as they may deem necessary to consider all of the exhibits and testimony so far introduced for the purpose of stating their position on this point.

Mr. HUGHES. Do I understand counsel to add in his last statement that he desires or proposes to reserve the right at any time in the future to introduce testimony as part of the Government's original case that may hereafter be discovered by the Government, without reference to time, so that there will be no period when this proceeding may reach a final consummation; and, if so, whether counsel for the Government will expect to concede the same privilege to the defendants.

Mr. SHERIDAN. We mean, with reference to that last statement, any evidence brought forth by this inquiry which may show it to be necessary in connection with such evidence so produced by the claimants to call anybody for explanation of that evidence, that we wish to reserve the right to do so, and we understand that counsel for claimants shall have the same right.

Mr. GRAY. Do you refer to rebuttal testimony, Mr. Sheridan?

Mr. HUGHES. Or impeachment?

Mr. GRAY. Or what implies, or—or, pardon me, go on.

Mr. SHERIDAN. We intend to be reasonable in this matter, nor to protract things unnecessarily; but we will state, any evidence in the nature of rebuttal, or testimony in the nature of rebuttal, may be required by subsequent developments in this inquiry—we mean by that, by testimony produced by the claimants—we shall, of course, reserve the right to rebut that; and if necessary to call any witness to do so, we shall do so.

Mr. HUGHES. We accede to that view entirely, Mr. Commissioner.

Mr. SHERIDAN. We also wish to make this statement, that we do not desire to protract this matter unnecessarily, but we will not allow our desire to have the matter presented as speedily as possible to interfere with the thoroughness of the investigation. That is the spirit of these remarks.

Mr. GRAY. It appears to me, Mr. Commissioner, that all of this matter on which we have been discussing must be ultimately determined by the rules of law and evidence and of practice which govern this proceeding and that any agreement or stipulation which we may enter into here at this time which would not be in harmony with this would not be advisable, both as it affects counsel for Government and as it affects ourselves; and I have no doubts that these matters are all governed by these rules of practice and of evidence and law; and it seems to me that the less we attempt this matter by our agreement, and the more we leave them to the rules and regulations which govern an investigation of this kind the better off we will be.

Mr. SHERIDAN. We now offer to rest the government case, with the understanding we may produce the deeds placed in escrow in Spokane, Wash., already referred to; that we may call all such entrymen and assignees as may not be called by counsel for claimants and that we may call such witnesses as we may subsequently find to be necessary in rebuttal of testimony offered by the claimants.

Mr. HUGHES. I would suggest, Mr. Commissioner, in view of the statements of counsel for Government offering to rest his case at this time, with the reservation of the right stated by him, that the defendant be given till 2 o'clock this afternoon to consider with their testimony at this time, in the light of counsel's statement, or will ask that the Government proceed further before resting its case. Before adjourning, however, I would suggest that there are certain matters that we would like to have clear in the record. I understand that the original papers which are enumerated in the stipulation constituting the files in the case of each entry are deemed to be in evidence and are here in the possession of counsel for the Government and of the commissioner.

Mr. SHERIDAN. That is correct.

Mr. HUGHES. It is also understood that we shall, under the supervision of the commissioner, have an opportunity at all times to examine with respect to these papers as it will be necessary for us to do so, in arranging and offering our testimony in order that we may know to what specific matters to direct the testimony.

Mr. SHERIDAN. All of these papers are in evidence, and in the possession of the commissioner under the stipulation. Of course, that is the right of counsel for claimants.

Mr. HUGHES. It is for that reason that I bring the matter up at this time, that I find upon rereading the stipulation which was drawn between the parties that we, as counsel for claimants, have been as careless in the consideration of the terms employed as it appears we were in the latter affidavits that were signed at the instance of Mr. Glavis. For instance, this stipulation provides in the fourth paragraph that these papers to which I have referred shall be deemed in evidence—that is the language—and for the purpose of expediting the presentation of the Government's evidence and to dispense with the formal introduction, identification, and incorporation into the record of certain documentary evidence, it is stipulated and agreed that the original records and papers pertaining to the initiation and progressive completion of the several involved entries, or certified copies thereof, need not be produced, and introduction and identification thereof is hereby expressly waived. Said records and papers shall be considered as offered and received in evidence, in the same manner and for the same purpose and effect as though they had been regularly and formally presented and admitted. The papers and records covered by this provision being as follows: By the stipulation that the Government need not produce them, we have deprived ourselves apparently of access to them. Of course, we did not intend that, and in that respect the stipulation is wrong.

The COMMISSIONER. Being a part of the record made.

Mr. PUGH. That merely meant to dispose of the formality of offering them.

Mr. HUGHES. It does not say so. It says that the Government need not produce them, but with that understanding we desire to inform the commissioner that we would like to have an opportunity to examine certain of these papers for the purpose of considering the matter involved at the first chance that shall be offered.

Mr. SHERIDAN. With that understanding, the Government rests its case.

And thereupon the further hearing of this inquiry was adjourned to 2 o'clock p. m., November 24, 1909.

NOVEMBER 24, 1909—2 P. M.

Appearances: Hon. William J. McGee, United States special commissioner; Mr. James M. Sheridan and Mr. William B. Pugh, counsel for the Government; Mr. E. C. Hughes and Mr. John P. Gray, counsel for the claimants.

Mr. HUGHES. If the commissioner please, before the Government rests, I wish to introduce as part of the cross-examination of Mr. Langille, for the purpose of explaining his cross-examination, the copy of the letter furnished the counsel for the Government on yester-

day addressed to Mr. Ames, and which Mr. Langille said that he read and which he stated to counsel was the basis of his instructions and of the investigation made by him; and I desire to explain at this time that the reason I did not introduce it while Mr. Langille was on the witness stand was because I was laboring under the impression that, inasmuch as it was stated to be of a private nature, it might be deemed to be revealing the confidential communications which the Government did not care to have made a matter of public record; but there is no reason why it should not now be presented, as I observe, however, without the fault of counsel for the Government or counsel for the defense, that the newspaper men have found an opportunity of obtaining it for examination and giving it publication in the paper, and that being the case, there is no objection upon the part of the Government on the ground I have just indicated.

Mr. SHERIDAN. No objection at all. I wish, however, to emphasize the fact at this time that that was the reason that Mr. Kennedy's letter of instruction was not introduced or turned over to counsel for inspection, for the further reason that there was a group of entries or other group of coal claimants set out together with the Cunningham group and general instructions given referred to all of them alike. Therefore, under the rules of the department, some of those groups not having been finally reported upon yet, these instructions are confidential until such time as the reports are completed upon all of those groups, at which time they will be a matter of publicity; and that is the only reason for not putting in the letter of instructions at this time and not because it contains anything which should not be published thereafter.

Mr. HUGHES. That was so understood by counsel for claimants at the time the letter referred to was submitted and explanation made by him, and we were content therewith and desire to state that we had drawn no inference and not attempt to draw any adversely to the Government on account of it.

If the commissioner please, we will proceed with the taking of testimony on behalf of the claimants at this time, but I desire to say that in doing so we are not wholly prepared and we shall desire, if we are able to do so at a later date, to make a statement of the issues for the defense so as to define the issues to which we will aim to direct our testimony. We wish, however, to do that at a later date, as we are not prepared for the reason I suggested at this time. We will now call Mr. Charles J. Smith.

CHARLES J. SMITH, a witness produced on behalf of the claimants, being first duly sworn by the commissioner, testified as follows:

Direct examination by Mr. HUGHES:

Q. Give your full name, Mr. Smith.—A. Charles J. Smith.

Q. You reside in the city of Seattle?—A. Yes, sir.

Q. How long have you been a resident of the city of Seattle?—A. Nineteen years.

Q. In what business are you now engaged?—A. The banking business, and I have some—I have some general interest in real estate and of coal mines in operation in the county; I am interested in coal mines.

Q. In the State of Washington?—A. Yes; and in the county of King.

Q. Have you, Mr. Smith, ever been engaged in the business of opening and operating coal mines and acquiring knowledge of coal lands?—A. Yes, sir.

Q. And coal properties?—A. Yes, sir.

Q. When, and for what length of time, and where were you engaged in that business?—A. I was the general manager of the Oregon Improvement Company for a number of years, about eight years, operating coal mines in King County.

Q. During what time?—A. From 1890 to 1898.

Q. During the later period of that time were you the receiver of that company and operating the property of that company as such?—A. Yes, sir.

Q. Mr. Smith, when and where did you first meet Mr. Clarence Cunningham?—A. Some time in 1903 he came into my office with a card of introduction from Governor Moore of Walla Walla.

Q. You had previously known Governor Moore?—A. Yes, sir.

Q. Now, you may state what transpired between you at that time so far as pertains in anywise to the matter now in controversy here, or to the making of any coal entry or location in Alaska.—A. Mr. Cunningham stated to me that he had been in Alaska, in the country then known as the Controller Bay Country, and had found some good indications of oil and also some of coal, and wanted to know if I was interested in making a location there. I told him that time I was not interested in oil, but if the coal was good I might consider the possibility of a location there. He told me that under the law, as he considered it at that time, the property was—that nothing but a mining location could be made, and I inquired with reference to the circumstances and the expenses there would be in connection with it, as that is an isolated country and difficult of access, and would be hard to get labor to, and the cost would be very material, and he informed me that there would probably be a number of locations there that would spread the expense of surveying and developments and make it reasonably easy for the service and expenses of people engaged in the exploration to be moderate for each claim, and I told him in that connection I would be willing to take a claim, and if he would look after it and would do the work that was necessary.

Q. Well, what further, if anything, took place at that time?—A. Well, that was about the substance of it. He told me when, or about when, he would go to Alaska, and I gave him authority to make what he called a mining location.

Q. For you?—A. For me.

Q. Did he tell you he or any other persons would go, and were intending to make such locations?—A. Well, he had several names there that he thought would take locations. The only ones that I know, that I recall, was Governor Moore, and Mr. Campbell, of Spokane.

Q. Did he say whether or not the other persons would act through him as agent?—A. Yes; he said that he would locate for them in the same way he did for me.

Q. You may state whether or not there was anything said in your conversations with Mr. Cunningham with respect to making a location for you for the purpose of transferring it to any corporation or association after entering.—A. No, sir; there was not.

Q. Was there anything said in that conversation with respect to making the location, and endeavoring to carry out to patent and then or thereafter holding it for joint operation, or for the joint benefit of the men who employed him acting as agent?—A. There was not.

Q. Was it suggested, stated, or agreed in any way that, if a location were made by you, and it was permitted to proceed to patent, you would hold that property in whole or in part, or any interest in it whatever, for the benefit of any other person or persons?—A. There was not.

Q. Or any association or corporation?—A. There was not.

Q. Did you have any other conversation with him before he proceeded to Alaska on that occasion?—A. I do not recall any.

Q. Was there any such understanding, or agreement, at any time, prior to his proceeding to Alaska to execute this commission, or these arrangements, and locate for you?—A. There was not.

Q. Now, when did you next see Mr. Cunningham?—A. He came down from Alaska with some coal. I don't remember when that was, whether it was in the later part of 1903, or the early part of 1904; but he had some samples of coal which he brought in and showed me, and the samples were exhibited as coal from that field.

Q. If you will permit me to interrupt just a moment. I don't think it will be improper for me to say that other evidence in this case will indicate that Mr. Cunningham made his trip to Alaska early in February, 1903. I will ask you if the time you now refer to is the first time you saw Mr. Cunningham concerning the preliminary arrangements about which you have testified?—A. Yes, sir.

Q. But that date you do not recall?—A. I do not recall it.

Q. Now, will you go on, and state, what, if anything occurred between you and Mr. Cunningham at this time when you saw him on his return from Alaska?—A. Well, I recall nothing except the facts that he stated he had made a location for me up there, and these samples of coal he brought out with him, and which were an evidence of the class and quality of the coal up there—

Q. Did you see him again, do you recall, before he returned to Alaska?—A. I remember of no other communication of any kind that we had with reference to the Alaska matters.

Q. I will ask you whether at any time on Mr. Cunningham's return from Alaska, after his going there to locate a claim for you, as stated, and before he again returned to Alaska, you had any conversations with Mr. Cunningham in relation to your holding, your location, or carrying it to final patent with the understanding that it should be transferred to any corporation, company, or association of persons?—A. None whatever.

Q. Or with the understanding that it should be held by you and afterwards jointly operated for the benefit of yourself and other entrymen?—A. No, sir.

Q. Or in which, or by which your claim should be held in whole, or in part for the benefit of Mr. Cunningham, or the benefit of any other entryman, or person than yourself?—A. No, sir.

Q. Now, state when you next saw Mr. Cunningham?—A. I think it was in 1904 I next recall it. He brought—he either brought or sent me a power of attorney for the location of coal mines under the law of 1904, and he stated to me that under the passage of the coal land act of 1894—

Q. You mean the act of 1904?—A. Yes—1904—that it would be desirable, and probably necessary for us to abandon any mining locations such as had been made and to take up to make application for coal land under the law of 1904, and presented me a power of attorney, and other papers and affidavits, I think, for my execution to enable him to proceed under the acts of 1904 to make a location in my name.

Q. I hand you now from the files coal entry No. 3, being the files of the Department of the Interior relating to lands embraced in the entry made—the location, and application for patent made by you, and which by the stipulation was in evidence in this case, and I ask you if the first paper contains your signature, the paper purporting to be the power of attorney?—A. Yes, sir.

Q. That is your signature?—A. Yes, sir.

Q. That is one of the papers you have just referred to, is it?—A. Yes, sir.

Q. Attached to that, in addition to an affidavit of Clarence Cunningham, is an affidavit purporting to be made by you, which I now show you, and ask you if the signature to that is your signature?—A. Yes, sir.

Q. You made and swore to this affidavit at the time?—A. Yes, sir.

Q. I will ask you if the statements contained in that affidavit were true at that time?—A. Yes, sir.

Mr. HUGHES. The paper just identified by the witness is a part of the papers embraced under cover of the United States Land Office and show the date of filing in the United States Land Office of Juneau, Alaska, October 10, 1905. For more specific reference the affidavit attached to this paper purports to have been sworn to before G. M. Upper, notary public. I make this statement so there will be no contention as to the particular paper to which the witness has just referred.

Q. Did you have any further conversations with Mr. Cunningham in relation to this matter at that time; and if so, state as near as you can what that conversation was?—A. Our conversation very largely held at that time was that he was to change the entry from the previous mining entry to a location under the law of 1904, and the reason why the affidavit and the new power of attorney was necessary.

Q. Now did you have any further or other conversation with him at the time when these papers were presented to you, or at any time other than that before his return to Alaska; and if so, state what it was?—A. I have no recollection of any.

Q. In any conversation had with him at the time of his return here, when he presented to you the power of attorney and affidavit for execution, did you have—which you have identified—did you have any conversation or agreement with him to the effect that your location would be made and attempted to be carried to patent for the benefit of any other person or association of persons or corporation other than yourself?—A. No, sir.

Q. Was there at that time any understanding or agreement between you and Mr. Cunningham or between you and any other persons represented by Mr. Cunningham that your entry, your location, if carried to patent, would be held by you, the land so acquired to be held by you, for the purpose of being transferred to any corpora-

tion then or thereafter to be organized or to any other association of persons?—A. There was not.

Q. Was there any understanding or agreement between you and Mr. Cunningham or between you and any other entrymen or locators represented by Mr. Cunningham, to the effect that you would hold your location, or in the event of issuance of patent your title to your entry, in whole, or in part, for the benefit of such persons, or of any person or persons whether entering or locating lands by Mr. Cunningham or not, except yourself solely?—A. There was not.

Q. Did you have any other understanding or agreement with Mr. Cunningham or anyone else that you would hold the title to this land if acquired by you under this location to be subsequently operated for the joint use and benefit of yourself and any other person or persons, or association, or corporation?—A. I did not.

Q. I call your attention to the fact that the power of attorney purporting to be dated on the 27th day of July and acknowledged on the same date before G. M. Upper, the affidavit attached thereto purports to be dated on the 15th day of November, 1904. Do you recall these as being separate occurrences? That is, I want to direct your attention to it, and ask you if you can recall what occurred on each one of those occasions?—A. I do not remember the separate occasions. They are more or less linked together in my mind. The only explanation I could give was that the power of attorney was probably forwarded by mail, and the affidavit was afterwards mailed, not knowing it was required to accompany it. I can only explain it that way. They are both linked together in my mind.

Q. The time of your conversation with Mr. Cunningham, when you say he presented the one or the other of these statements to you would be which date, according to your best recollection?—A. Well, I think the date of the power of attorney would probably be the date.

Q. Other than the affidavit? The affidavit is dated in November?—A. Well, I could not be sure. It is a long time. I could not be sure.

Q. Now, Mr. Smith, taking the latter date as the base of this question I will ask you whether, on or before November 15, you had conversations with any of the persons who are seeking to make locations of coal land in the Controllor Bay district through Mr. Cunningham as agent, and if so, with whom?—A. Well, I think possibly I had a conversation with Mr. Henry, and a conversation with Mr. Cunningham, and a conversation with Governor Moore. That conversation was very largely in the way of what the samples of coal Mr. Cunningham had brought down, whether in my opinion they were valuable—evidence of valuable coal deposits; and, secondly, conversations with reference to change in the land law existing or change in the entries.

Q. Have you ever met any other of the defendants in this proceeding or conversed with any of them prior to this 15th day of November, 1904, other than those you have mentioned?—A. I think Mr. Campbell, and Mr. Wick, of Cleveland, came into my office sometime in 1904, and stated to me that they had given Mr. Cunningham powers of attorney for coal land there, and I was introduced to Wicks for the first time; never met him before, and he asked me what I thought about the coal and analysis of it, which we had, and we had some conversation with reference to the value of coal, and whether there

was a possibility of any market for coal on this coast, he being an entire stranger. That was all the conversation that occurred between us.

Q. Now, I hand you, Mr. Smith, from the files in the United States Land Office, your location, designated upon the paper as coal cash entry No. 3, filed February 21, 1906, purporting to be an application for patent, and ask you if that was signed by you?—A. Yes, sir.

Q. That is your signature?—A. Yes, sir.

Q. Purporting to be sworn to before R. Mines, a notary public?—A. Yes, sir.

Q. In the county of King, on the 31st of January, 1906?—A. Yes, sir.

Q. Did you have any conversation with any of the entrymen involved with Mr. Cunningham as your agent at the time this paper was executed by you?—A. I have no recollection of any.

Q. Do you recall whether you received it by mail, or whether it was presented to you personally?—A. No, sir; I do not.

Q. In this you make the statement, among other things, "I make the entry for my own use and benefit, and not directly or indirectly for the use and benefit of any other party." I will ask you now, so counsel may have ample opportunity for cross-examination, to state whether the statements made in this affidavit which I have just read to you were true when made?—A. They were.

Q. I now hand you a paper from the same files, purporting to have been filed in the United States land office at Juneau, Alaska, on February 26, 1907, which is an affidavit made by you. I will ask you if your signature there is your genuine signature?—A. Yes, sir; it is.

Q. Purports to have been sworn to on the 14th day of December, 1906?—A. Yes, sir.

Mr. HUGHES. This affidavit I now read as a basis for a further interrogatory, and desire the stenographer to take it and set it out in full in the record. (Reading.)

Affidavit of applicant.

STATE OF WASHINGTON,

County of King, ss.

C. J. Smith, of Seattle, Wash., being first duly sworn, according to the law, deposes and says: That he is the identical person of that name who made, by power of attorney to one Clarence Cunningham, a coal location of 155.447 acres of public land in the Kayak recording district, Alaska, under the acts of Congress approved April 28, 1904; said coal claim being known of record as the Lyons coal claim; that he is the same person who applies to enter such claim under United States land survey No. 71; that said location was made for the sole use and benefit of the affiant, and has ever since so remained as, and in his exclusive control, and at no time prior to the location, or at such time, or since, has affiant entered into any agreement, express or implied, or pledged himself by a promise or otherwise, express or implied, by which the title to said land, or any part thereof, or any interest therein has passed to any other person or association whatsoever; that in the event said claim goes to entry in the United States land office at Juneau, Alaska, and the receivers receipt for the purchase price issued, he will not be under any contract or obligation or promise to sell or convey said land to any person or persons, or association, or to put the same into any company or joint holding for any purpose or to otherwise jeopardize the same, but will be free in every way to hold said tract to lease or sell it at any future time; that he does not know any person or persons, or associations that intend or contemplate the leasing or purchasing of said tract; that a valuable vein of merchantable coal has been developed by the affiant through his agent upon said tract, as he verily believes; the affiant has spent, in making said location and charges for serv-

ices of said agent in developing said vein of coal and the expenses incident to the acquirement of title, the sum of \$2,200; that said sum was his own personal funds or borrowed for such purpose, but without any agreement or understanding that the person loaning such to him, or any other ones other than the affiant, shall have any interest in or control over said tract; that this affidavit is made for the purpose of additional evidence of affiant's bona fides in the matter of said coal location and proposed entry, and for use as part of the record in said application.

Mr. HUGHES. The foregoing is typewritten, except the name of Mr. Smith, his residence, and the name of Mr. Cunningham, the name of the claim, and the recording district is in figures; and then follows in writing by pen this further language:

This affiant has discussed with applicants of adjoining claims the advisability of joint development and operation, but this was for convenience and economical reasons and did not contemplate any share in ownership, nor is there any agreement with them. Signed, C. J. Smith. Subscribed and sworn to on the 14th day of December, 1906.

Q. I will ask you if that statement, which I have just read, and which is contained in the affidavit which has been shown to you, and all of those statements were true at the time when they were made?—A. Yes, sir.

Q. I will ask you to examine the portion written in with ink and state if you know in whose handwriting that is.—A. That is my handwriting.

Q. I will ask you to state with what locator, as near as you can recall, you had had any discussion relating to your own entry, or to others, about work being done by Mr. Cunningham as your or their agent prior to the time of the signing of this affidavit?—A. This discussion was made, arising, or occurring out of the question of expenses. Mr. Cunningham stated to me that while there would be quite an amount of exploration, a number of cuts and tunnel work done on my own and various other claims up there; that his experience had been largely with mining of precious minerals, and that he himself, and several of the other claimants that he mentioned—and he stated he thought most of the claimants, in fact, all of them—would like to have a more definite idea of the value of the coal, and the regularity of it before they made their final payments, which were coming on in a comparatively short time; and that on account of my experience in the coal business he thought possibly I might find a man that could be sent up there and look over the coal measures and see whether they were in regular shape, or such as would make them valuable rather than a broken faulty condition. I discussed the matter with Mr. ——— in other conversations with Mr. Henry and Governor Moore, who happened to be here about that time, and they thought that other men there would be very glad to have such information, and especially from a man who had been mining coal, and whose experience would enable him to judge of the regularity of the field. On their request, and at the request of Mr. Cunningham, I looked over the papers, and told them I believed I could get a mining man who would be satisfactory, who had done a large amount of work for me in the past, and was a good engineer and understood his business, and he was a man upon whose report I would rely for the value of the coal measures; and at their request I sent for the man and introduced him to Mr. Cunningham; and after some discussion of the matter with him—the man was Mr. H. L. Hawkins—he was

employed and sent to Alaska, with instructions to examine the coal with reference to its regularity on each claim, and to be prepared to examine not only the coal itself but the dip and strike of the rocks at the intersection of the canyons on each side of the coal lands, so that he could be prepared definitely to ascertain and report as to whether or not a faulty condition would possibly or probably exist under a whole or a part of the coal measures located on these claims.

Mr. Hawkins, being also a civil engineer, was told, in addition to this, to look over the question of whether the rail lines could be brought up to the coal field from the ocean; and it was largely a discussion of such general matters as that that led to that addition in my affidavit, as it was a question whether we should do any work of a general nature, and it was assumed and believed, and I so stated it, that I did not believe it was possible for the Government to feel that there was any question of impropriety of such action that a man would take to determine the value of his own property before he paid for it; and it was dependent entirely upon his report, not only as to the class and quality of the coal and the regularity of the measures, but also the possibility of some transportation out of there, whether we wanted to pay any money at all or not or whether we wished to go ahead with the entries and pay our money for the patent; and that led to discussion which was referred to in addition to that affidavit.

Q. This talk that you refer to now was a conversation which occurred prior to the sending of Mr. Hawkins to Alaska?—A. Yes, sir.

Q. Mr. Hawkins was sent there in the fall of 1905?—A. Yes, sir.

Q. And was gone for a couple of months, and subsequently made a report?—A. Yes, sir.

Q. Now, this conversation with Mr. Cunningham and others, did it occur in Seattle?—A. Yes, sir.

Q. It was, then, at the time when Mr. Cunningham was here; in the fall or summer of 1905?—A. Yes, sir.

Q. In this connection, the Government has introduced in evidence in this case a similar affidavit to that last shown you signed by Clarence Cunningham. I hand it to you and I will ask you to examine it, it being the affidavit which is attached to Government Exhibit No. 1?—A. Yes, sir.

Q. Look it over, because after you have examined it I want to ask you some questions in relation to it.—A. Yes, sir.

Q. I will ask you if you recall any circumstance relating to your having seen this paper before, and if so, detail it?—A. Yes; Mr. Cunningham brought the affidavit I signed along with his own affidavit, and, I believe, that of Mr. Henry, and at that time I said to Mr. Cunningham that we had already signed an affidavit making the application for the property to the effect that it was for our sole use and benefit; that I had reiterated that affidavit in another instance; and that it seemed to me that this was simply a rehash of the same thing, because when I stated it was for my sole use and benefit and no other person had any interest in it, stating that another person has not had any interest in it, would not add to it in any kind of a way; and assuming that Mr. Cunningham had drawn the affidavit up himself, I was running my pencil through what I considered a great deal of unnecessary verbiage, that was doing nothing but duplicating the statements that had already been made.

Q. I will ask you whether you wrote the lead pencil marks?—
A. Yes, sir; that was my writing.

Q. It is substantially like the part inserted in ink in your affidavit?—A. Yes, sir.

Q. Now, did you learn in the course of the conversation you had at that time that this affidavit was drawn and was requested by Mr. Love especially for the Government?—A. Yes, after I had made the interlineations, or interpolations, or the erasures, Mr. Cunningham said that the affidavit had been prepared by Mr. Love, a government agent, and I said very well, let it go, then, the way it is. There is nothing that I object to in the matter. It is simply unnecessary repetition of the same thing.

Q. Now, this conversation occurred some time before the signing of your affidavit, I take it. That appears to have been signed a little later than Mr. Cunningham's a few days later, and Mr. Cunningham appears to have signed this before Mr. Love on the 2d of January, 1907?—A. I think I signed my own first probably.

Q. Now, it don't appear so according to the paper itself. Yes, sir, this is on the 14th. Then this conversation occurred at the time you signed yours, yours is signed on the 14th of December and his is on the 2d of January, 1907?—A. Yes, sir.

Q. Mr. Smith, you have explained about the investigation made by Mr. Hawkins and the circumstances of sending him up there. Without referring to the report, which the Government has already introduced in evidence in this case, I will ask you whether any further steps were taken by you, or you in conjunction with any other entryman, of a general nature relating to the production and development, to know of the value of the property in case you consummated your purchase?—A. Yes, Mr. Hawkins was there in the summer or early fall. He was not able to obtain information with reference to a port that we desired to have, as it was a very open question as to whether coal could be shipped from that port and, if not, it would have to go possibly to some other port, 100 to 125 miles away. If it could be shipped from that port, a distance of 25 miles, it would make a vast difference in the value of the property. If, however, the transportation of the coal by rail to the sea would require a 125-mile haul it would be an open question whether it could be done or not, with any profit; and while he made preliminary recognizances from the fields there to the deep waters in Controller Bay, he was not able to decide by reason of the time of the year nor by information that he could obtain from people there what the flow of ice would be, and what the difficulties of the fields there would be in the winter time from sheet ice.

Q. Now, was the obtaining of this information of any importance or value to you in determining whether to perfect your entry and pay the purchase price to the Government?—A. Yes, sir; it was.

Q. Proceed.—A. Under that condition we decided it best to send an engineer who had experience in such matters to take soundings and to look over the ice conditions at Controller Bay; for that purpose we employed a Mr. Zammy—Mr. Cunningham did. He brought him in and introduced him to me and stated he had been recommended to him, and I talked with Mr. Zammy with reference to his experience and told Mr. Cunningham as far as I was concerned his employment would be satisfactory and his report would be satisfactory to me.

Q. Now, when you say "we discuss these matters," to whom do you refer? That is to say, with whom did you discuss this subject?—A. Well, this subject, I think, only between Mr. Cunningham and myself. I don't know what other entryman he discussed the matter with, but he employed Mr. Zammy, and reported the matter to me and asked me, as far as I was concerned, to consent to his employment.

Q. Before consummating any arrangements with him you discussed it with him and he with you?—A. Yes, sir.

Q. Did you ratify it?—A. Yes; and there was the other question arising out of the preliminary recognizance that Mr. Hawkins made as to the transportation line from the coal land to the bay; and Mr. Cunningham discussed with me and I understood from him he had discussed it, or had asked the opinion of other entrymen and claimants—the other entrymen.

Q. With all of them or only a part of them?—A. Well, of all; he had notified them of the business and requested them to advise him to carry on a preliminary survey of a line down to tide water so that a right of way could be obtained and the means of transportation could be provided, so that if the coal mines on that property, or any part of it, or any other part of the other properties that were located by various and sundry other people, needed transportation it might be to a considerable extent advanced by this work. Preliminary workings having already been accomplished and the location work being comparatively simple, for the preliminary expense had been adopted. On that basis he had articles of incorporation filed for a railroad line and an engineer appointed to make a definite survey.

Q. You joined in the execution of those articles of incorporation?—A. Yes, sir.

Q. And the recording of them?—A. Yes, sir.

Q. Now, all of this you have described occurred before the signing of what has been termed as the Love affidavit?—A. Yes, sir.

Q. That was made by you in the month of December, 1906, and then was prior to your making final payment?—A. Yes, sir.

Q. Upon your application?—A. Yes, sir.

Q. What is the next thing that occurred in connection with your location and the carrying it through to final payment?—A. I sent the money to the agent in the early part of 1907, and obtained final receipts—I think some time about April, 1907, I got it.

Q. Did you send the money from Seattle to the register and receiver?—A. Yes; to the receiver.

Q. I show you the original files, a duplicate receipt, obtained from the receiver's office, which appears to bear the date February 28, 1907?—A. Well, I said about that time; I don't remember. It was the early part of 1907.

Q. There was the time the receipt was issued?—A. Yes. Well, I sent the money through the National Bank of Commerce.

Q. Now, at the time when the receiver issued the final receipt for your coal location I will ask you whether you had, or at any time prior thereto had had, any agreement or understanding with Mr. Cunningham or any other of the entrymen named as defendants in these proceedings to the effect that you would hold the entry and,

pending receipt of patent, would hold the legal title to this whole claim for the benefit of any person or persons or association of persons except yourself?—A. I did not.

Q. Did you have any understanding or agreement with any person whatsoever that you would transfer this claim to any corporation organized or to be organized in the future?—A. I did not.

Q. Did you have any understanding or agreement with any person or association of persons except yourself organized or to be organized in the future?—A. I did not.

Q. Did you have any understanding with any person or persons that you would hold the title of this claim and enter into any arrangement by which it would be operated in conjunction with other claims by mining and selling coal for the common benefit of persons jointly?—A. I did not.

Q. Had you had any other conversations with the other of the locators who are defendants in this action or with any other person in which you had promised to such person or persons or they had promised to you that you would hold this claim in whole or in part for their benefit or they would hold any claim located by them for your benefit in whole or part?—A. I did not.

Q. Had you any understanding, Mr. Smith, either expressed or implied by which your ownership and dominion or control over this claim, or your right to sell these, or otherwise use or dispose of this claim and every part of it was in any way limited or abridged?—A. I did not.

Mr. HUGHES. Now, I desire to say to the commissioner that purely as an extra evidence of additional good faith, and not because we deem it in any way material to this controversy, because we shall probably do it with other witnesses, I would go into one phase which we deem wholly immaterial, that is, in reference to the so-called Guggenheim negotiations, and which were, as the state of the record now discloses, subsequent to the final payment and the issuance of the receipt of that certificate, as to which afterwards it could not be claimed that any act looking to the disposition of the whole of this claim or any part of it or any interest in it would constitute a violation or be a basis of right to cancel the entries. I make that statement as a statement of observation, and as explanation of the fact we may not repeat the same testimony with all our witnesses on account of avoiding any unnecessary filling up of this record, but I will go into the subject with this witness in order that the Government may have an opportunity to cross-examine him. In making that statement, however, I do not mean to intimate that we will not go into it with other witnesses or with the expectation that the Government is to be denied its privilege if it see fit.

Q. Mr. Smith, certain evidence has been introduced by the Government relating to negotiations—with relation to negotiations—with the so-called Guggenheim interests. Will you be kind enough to explain what knowledge you have of those transactions during the time when they occurred so far as you had any personal knowledge of them, and by that I mean any personal relations with them or connection with them?—A. Some time in May or June, 1907, Mr. Cunningham informed me that the Guggenheim people were considering the question of building a railroad into the coal fields up

there and wanted to operate or haul coal out, and as they were debating where they would construct their line to water, whether to Katalla or to Cordova, or some other point which would be advisable for the various people who owned coal claims. After some discussion of the matter with the Guggenheim interests, looking to definite question of the possibility of transportation of coal and of an operation of some kind to the property and as a majority of the claimants were in Spokane, suggested my going to Spokane with them. I could not do so and the next I understood from it was that a meeting had taken place in Spokane and that a number of the claimants had appointed a committee to meet the representative of the Guggenheims and discuss the proposition with him. The next thing I knew was Mr. Cunningham bringing in a copy of that proposition which had been discussed with the representative of the Guggenheim interests, and which was based upon their building a line to Katalla. I objected at that time to the proposition and expressed my objections to Mr. Cunningham. The Guggenheim interests very shortly after decided to go to Cordova for their port, which would necessitate a 125-mile haul; as the negotiations were based upon the haul to Katalla, we considered them as being abandoned and no further steps were taken with reference to that or in connection therewith.

Q. Did you ever agree to the terms set out in this proposition marked Government's Exhibit 10?—A. No.

Q. Had you had any discussion with Cunningham or any other person, whether one of the defendants in this case or not, relative to any negotiations with the so-called Guggenheim interests at any time prior to your payment of your money and receiving your final receipt?—A. No, sir.

Q. Do you recall the next transaction that occurred with reference to the Government's attitude respecting your entry or that of any of the other entries made by Mr. Cunningham as agent?—A. The next thing that I remember was Mr. Cunningham coming into my office with Mr. Glavis.

Q. Go on and state what occurred at that time, Mr. Smith.—A. Well, Mr. Cunningham brought Mr. Glavis into my office and he introduced him as a special agent of the Government, and stated that he had an affidavit that he would like for us to sign.

Q. Who stated that?—A. Mr. Cunningham stated that Mr. Glavis had an affidavit he desired me to sign, and I was rather short at that time and stated that I had made all the affidavits I was going to; that I considered we had been put off two or three years already on one pretext and another and I did not care to make any more affidavits; that my entries could stand upon my previous papers and such information as they had about it. The statement was made by Mr. Glavis that there was an idea the Cunningham people had advanced money or had an interest in the location of the claims.

Q. You mean the Guggenheims? You said the Cunninghams.—A. Yes.

Mr. SHERIDAN. Let me interrupt a moment; was that statement made at that time?

A. Yes, sir. That was a question in the Government Land Office that the Guggenheims were and had been interested in the claims and had advanced possibly more or less money and they had some

agreement or understanding with reference to it, and that this affidavit was prepared so as to give the applicant an opportunity to clear the record in regard to these claims with reference to that statement.

Q. Did he say anything further indicating what was the status of your entries as to whether they were ready to patent?—A. I assumed from the statement that he made that the entries at that time, with the exception of the Guggenheim matter, was fairly clear in the land department, and that this was an affidavit that would reasonably tend to clear up the matter and bring about the issuance of patent. Upon that statement of the matter I took the affidavit, and, having the Guggenheim negotiations just prior to that time in my mind, I was willing to execute the affidavit to show they had not had any interest whatever in any particular claims and that there was no question that they were involved in any sort of way in any agreement with us.

Q. Now, Mr. Smith, before proceeding further with respect to this matter, I hand you Government Exhibit 15, and ask you to examine it so I may propound certain questions to you in reference to it. This affidavit first, and then that of Mr. Cunningham's, to which is referred. [Witness takes paper.]

Q. You have examined the affidavit?—A. Yes, sir.

Q. You say in your affidavit in your case that you had read the affidavit of Clarence Cunningham, which is attached. Do you recall the circumstances in regard to that; and if so, explain it?—A. That was attached to the affidavit that I had, and the conversation was entirely in connection with the Guggenheim matter. I assumed the affidavit was made particularly and especially with reference to those negotiations.

Q. Do you recall whether at that time you took the time to read it over or relied on the statements?—A. I glanced over this very carelessly. I must have done so, because in my affidavit I stated that I am well acquainted with most of the other coal-land entrymen for whom Cunningham was agent. As a matter of fact I was not acquainted with more than four or five of them, and I had so much of the Guggenheim matter in my mind that I did not consider the balance of it as material, and I did not give it the consideration I should have done.

Q. Now, you say in your affidavit, "We have understood among the entrymen that when the title was secured we would probably form a company for the operation of the entire group on the ground of economy." Will you explain what you mean by that?—A. That was in reference to the meeting at Spokane, or a discussion of this question of preparing some kind of an association that was discussed, or doing business if they thought advisable with the Guggenheim interests.

Q. And when you use that language, did you refer to any other understanding among the entrymen and that which originated at the time these suggestions or negotiations with the Guggenheims took place, or was subsequently involved in the negotiations with the Guggenheims?—A. No; I had no understanding whatever with reference to any joint operation except the belief in my mind and the knowledge in my mind that no single man could ever operate his claim up there by himself; but I was willing and contented to rest until I could have proper and reasonable opportunity to join

with 1, 2, 3, 50, or more people to make a mine; because I knew that no one person, or no two persons, or no three persons could ever make a mine.

Q. Now, I call attention to the following language in the affidavit of Mr. Cunningham to which this was attached, and which reads, "Not only have the Guggenheim interests had nothing to say regarding our coal lands, but no other corporation has had anything to do with it; we have had no written agreement whatever with any corporation and the only understanding which we have had is among ourselves; we have an understanding that when patents had been secured we would form a company for the development of the coal fields, but none of the claims were taken up for the benefit of a corporation, but merely with the idea that when titles were secured we would combine our claims and work the coal fields for ourselves; we have always proceeded with this end in view, for anyone familiar with coal mines well knows it is impracticable to mine an individual claim of 150 acres, especially in Alaska, where expenses are so great." I will ask you to state, since you refer to the Cunningham affidavit in your evidence, what, if anything, was your understanding of the meaning of that language at the time you made such affidavit? What was your meaning for having it in your affidavit?—A. My understanding of the language was exactly the same as with reference to the mines. That is it—that the only attempt in any kind of a way, to come—to discuss the matters of any joint operations between myself and any other claimants was at the meeting at Spokane at which I was not present but which—the result of which was communicated to me and there was no agreement between myself and any other individual except the knowledge on my part that sooner or later some people in some way had to put their claims together to make a mine of it.

Mr. HUGHES. Now, may it please the commissioner, I do not know that we shall want to ask Mr. Smith any other questions, but as you are aware we have gone rather unexpectedly in our evidence and I would like an opportunity to adjourn at this time so as to consider whether there is anything which we have neglected or overlooked. As to-morrow is Thanksgiving, I would suggest that we adjourn till Friday morning, 10 o'clock.

The COMMISSIONER. Any objection to that request?

Mr. SHERIDAN. No objection to it whatever.

The COMMISSIONER. With that understanding, the proceedings are adjourned till Friday morning, 10 o'clock.

(And thereupon the further inquiry of this hearing was adjourned until Friday, November 26, 10 o'clock a. m.)

NOVEMBER 26, 1909—10 A. M.

Appearances, Hon. William J. McGee, United States special commissioner; Mr. James M. Sheridan and Mr. William B. Pugh, counsel for the Government; Mr. E. C. Hughes and Mr. John P. Gray, counsel for the claimants.

CHARLES J. SMITH, on the stand.

Mr. HUGHES. You may take the witness.

Cross-examination by Mr. SHERIDAN:

Q. How old are you, Mr. Smith?—A. Fifty-five years old.

Q. I believe you stated for about nineteen years you have been on the Pacific coast here?—A. I have been about thirty years on the Pacific coast, but I have been nineteen years in Seattle.

Q. During all of these nineteen years, Mr. Smith, you have been in business here in Seattle, as I understand?—A. Yes, sir.

Q. And during the greater part of your entire experience on the Pacific coast you have been in business out here?—A. I didn't quite catch that.

Mr. SHERIDAN. Read the question.

(Question read by the reporter.)

A. Yes.

Q. Now, apart from the nineteen years which you have already given us some details of, being your business experience here in Seattle, Wash., what other business were you engaged in on the Pacific coast prior to that time? Just generally, in a rough way?—

A. I was the general manager of the Oregon Railway and Navigation Company, and as controller of that company, and first assistant controller of that company. Three years of that time I was East, and while I was East I was vice-president and secretary of that and other companies; and one year I was in the employ of the Northern Pacific Railway as general land commissioner.

Q. You are in the banking business here in Seattle at the present time?—A. Yes, sir.

Q. What banks are you connected with here?—A. Washington Trust.

Q. Any others?—A. No.

Q. Are any of the entrymen in this group of entries now under investigation officers or stockholders of that same bank, as far as you know?—A. No, sir.

Q. Now, Mr. Smith, in your direct examination, you informed us that some time in 1903 you first met Clarence Cunningham, who came to you with a card of introduction from Governor Moore?—A. Yes, sir.

Q. Do you recall whether he had a letter of introduction, or merely a card?—A. My impression was that it was a bare letter of introduction.

Q. Have you that letter at the present time?—A. No, sir.

Q. You do not know where it is?—A. No; probably I put in the waste basket.

Q. Now, give us, as near as you can, Mr. Smith, the conversation which occurred between you and Mr. Cunningham at that time?—A. Mr. Cunningham told me that he had been up north and had been looking at some oil and coal measures in the Bering—in the Controller Bay district, as it was known at that time, and wanted to know if I would be likely to be interested in it, and I told him as far as I was concerned I was not interested in oil, but if the coal was valuable I probably might be interested in it, and he said that there being at that time no coal-land laws as he thought applicable to Alaska, and excepting possibly mineral locations, they would have to be taken up as mineral locations, and I asked him about what the possible or probable expenses would be, as that is a very difficult country, and he said that there would be—he had a number of people

that were—that were also expecting to locate claims there and that the division of expense would make it comparatively reasonable—the expenses and services would be reasonable to each one, and I said on that basis, if the coal was good, I will be willing to give you authority to take a location for me.

Q. That was the gist of the conversation that occurred at this time?—A. Yes, sir.

Q. Did Mr. Cunningham mention to you who the other parties were?—A. He told me two or three other parties that I bear in mind. The rest of them I did not know and never had heard of. I knew Governor Moore, and I knew by reputation one or two others. Beyond those I did not know any of them and they did not stay in my mind.

Q. The other two, whom you knew by reputation; do you recall their names?—A. Mr. Campbell and Mr. Finch, of Spokane.

Q. Now, what expenses, if any, did you put up toward having Mr. Cunningham make investigations with regard to these oil lands?—A. I did not have any interest in any oil land at all.

Q. Was there any fund advanced by you for the purpose of exploration in Alaska by Mr. Cunningham for the purpose of coal investigation?—A. Yes, sir.

Q. Did you advance any money to Mr. Cunningham on this occasion for the purpose of examining coal lands in Alaska?—A. Yes, sir.

Q. How much?—A. I think it was \$500.

Q. What representations did Mr. Cunningham make to you that induced you to advance him \$500?—A. That the coal lands would contain valuable coal.

Q. Did you make this advancement merely on Mr. Cunningham's word?—A. Yes; entirely.

Q. At the time you had never met Mr. Cunningham before, Mr. Smith?—A. No, sir.

Q. Did you know anything of his ability or experience in such matters as those?—A. None whatever.

Q. Did Mr. Cunningham, at any time, subsequently, make any accounting to you for this \$500?—A. Yes, sir.

Q. In what way?—A. Well, I think he gave me a written statement of the expenditures that he had made in connection with coal lands.

Q. Approximately how soon after advancing this \$500 to Mr. Cunningham did you receive from him this written statement?—A. Yes; I think probably eight or ten months afterward. I am not sure.

Q. Have you preserved that statement?—A. I am not sure whether I did nor not. I think I probably preserved it until I got the second one, in which case I did not—I either filed it or destroyed it.

Q. Did you receive only one statement between this first conversation with Mr. Cunningham and your second conversation with him?—A. I do not know.

Q. But you can not recall that?—A. No.

Q. On this first occasion, when you conversed with Mr. Cunningham and advanced the \$500, did you take up with him the question of the feasibility of operating the entry which you proposed to have him take up for you?—A. No; not at that time.

Q. Your next conversation with Mr. Clarence Cunningham, I understand you, was when he returned from Alaska, in the latter part of 1903 or the early part of 1904, bringing with him samples of coal?—A. That is my remembrance.

Q. Give us, as near as you can, the substance of the conversation on this occasion?—A. Well, it ran very largely to the class and quality of coal, and the analyses that he had made of several samples and of the width of some of the veins that he had uncovered.

Q. Did you at this time discuss the feasibility of operating the property?—A. No, sir.

Q. You just merely examined the samples of coal?—A. Yes; and the class and quality of it. And he had made some tests there in open fires, and also, I think, with a piece of gas pipe for coke, and a few things like that, that we discussed.

Q. Did Mr. Cunningham, on this second occasion, discuss with you anything about the distance that the entry he proposed to take up for you, or had located for you, was from transportation facilities?—A. He may have done it. I probably was interested in the distance from tide water, and I may have asked him that question, but I do not recall it.

Q. Have you any memorandum of correspondence in your possession relating to these interviews with Mr. Cunningham?—A. I have no correspondence.

Q. You have testified, Mr. Smith, that in the year 1904 a power of attorney was either sent to you or brought to you by Mr. Cunningham, for the purpose of locating your entry in accordance with the act of 1904?—A. Yes, sir.

Q. Could you recall whether or not that was sent to you by mail or brought to you personally?—A. I don't. I don't remember.

Q. Now, up to and including these two occasions when you had interviews with Cunningham, and up to the time you received and signed this power of attorney, had you consulted any attorneys in connection with this matter?—A. No, sir.

Q. You relied merely on your own judgment of these affairs?—A. Yes, sir.

Q. On the second visit of Mr. Cunningham, when he came back with the samples; did you advance him any more funds at this time?—A. I am not sure. Running over quite a long period he was drawing from time to time amounts of \$100 or more up to probably \$500, and from time to time I would pay those drafts of his.

Q. Yes. About how frequently, just generally, in the year did he draw on you for funds?—A. Well, while prospecting was being done there he would draw quite frequently.

Q. How many times in a year?—A. Yes; four or five times a year; in fact, I think sometimes once a month.

Q. Through what banks or bank were these drafts handled?—A. Handled through the National Bank of Commerce.

Q. Of Seattle, Wash.?—A. Yes, sir.

Q. You stated, I believe, Mr. Smith, in your direct examination that possibly you had had a conversation with Mr. Henry and Mr. Clarence Cunningham and Governor Moore prior to November 15, 1904, concerning these coal lands?—A. Yes, sir.

Q. Now, since you testified, has the matter become any more clearly fixed in your mind?—A. Well, I have an indistinct recollection of having done so.

Q. You do not recall, however, what that conversation was?—

A. Well, in a general way it was in reference to coal that Cunningham brought out, and the quality of it, and my opinion of it, and, generally speaking, whether it was good coal or not, and how far the coal was from the shore, and whether there was a port there, and such general talk as that might be.

Q. That is about as distinctly as you can recall it now?—A. Yes.

Q. Do you know whether you have any reports, any correspondence, or memorandums relating to these conversations?—A. I have no correspondence.

Q. Now, I believe you have testified in your direct examination that with reference to the application for patent for your claim which was made in 1906, you do not recall whether it was received by mail, or received personally?—A. No, sir; I do not.

Q. That is still your recollection of it?—A. Yes, sir.

Q. I hand you herewith the application for patent already referred to by you in your direct examination, in which you stated that the statements therein made concerning the use and benefit were true at the time you made them. This is the same application for patent referred to by counsel for claimants as dated February 21, 1906. I will ask you to state if that statement made in that affidavit, that it was for your own exclusive use and benefit, apart from being true at that time you signed this, was also true at every time prior thereto during the time you became interested in that claim.—A. Yes, sir.

Mr. SHERIDAN. The paper which I just handed to witness was, of course, included in the stipulation putting in all of the original entry papers in evidence under that stipulation.

Q. I now hand you an affidavit of applicant filed in the United States land office, at Juneau, Alaska, February 26, 1907, the last typewritten clause of which reads: "That this affidavit is made for the purpose of additional evidence of the affiant's bona fides in the matter of such coal location and proposed entry, and for the use as a part of the record in said application." This is the same affidavit to which you added something in pen and ink. I will ask you to state, Mr. Smith, as nearly as you can, what you recall concerning the receipt of that affidavit and how it came into your possession?—

A. As near as I can recall, this affidavit was brought to me by Mr. Cunningham, who stated to me that it was an affidavit that was required by Mr. Love, a special agent of the department, and was considered at that time by me as a mere reiteration of my former affidavit, on which, as I understood from—I did not understand from Mr. Cunningham that it came from Mr. Love, but he handed it to me and I assumed it was an affidavit either drawn by him or some attorney for him, and brought to me for signature. Feeling it was simply a reiteration, with a considerable amount of verbiage, I started to cross my pen through a very considerable amount of it, stating that I did not see it was necessary to say when I took it for my own sole use and benefit that it would be required of me to say that I took it for my sole use and benefit, wholly or in part or with any other limitation of what would be sole use and benefit; but on his statement to me that it came from Mr. Love, I said, "Very well, there

is nothing in it I object to, and my criticism was that it was simply a reiteration and I would therefore sign it." As to the addition made by me, this was a matter that came after we had had a report on the port, with reference to transportation, and general information that I had requested Mr. Hawkins to make in the examination of the coal to make one of general production and general necessity to ascertain the value of the property before we bought it, as we did not want to go into the question of purchase and pay our money until we were fully satisfied as to the leading conditions: First, was the coal good; second, could it brought down to water; and third, is there a port there where it can be brought to; and fourth, is there possibly any market. I considered those were questions which were necessary for myself, as well as anybody else, to consider, and we had some question with reference to that—some discussion with reference to these matters—and that led to my addition to his affidavit.

Q. Mr. Cunningham, as I understand you, ultimately informed you he had got this affidavit from Special Agent Love?—A. Yes; when he saw me interpolating and erasing, he said, "This comes from Mr. Love;" and I said, "Very well, if it comes from Mr. Love I have no objections to signing it. It just seems unnecessary, that is all."

Q. Was this all Mr. Cunningham said to you concerning this affidavit, as far as you can recall?—A. Yes; that is all I recall.

Q. This affidavit, which you have just consulted and which bears date February 26, 1907, and which is signed by you with the additional pen and ink note, is not the same affidavit which you interlined with pencil, is it?—A. No, sir; he brought—he had—my understanding was he brought three affidavits—his own, Mr. Henry's, and mine; and they happened to be together in his hands, and when he took them out of his pocket we were talking, and I thought it was his affidavit—either his or Mr. Henry's—that I interlineated or erased. I am not sure which it was, but it was one or the other.

Q. I now hand you Government Exhibit 15, which is a carbon copy of the affidavit of Clarence Cunningham, dated March 6, 1908, signed before L. R. Glavis, chief of field division, and witnessed by Horace Tillard Jones, to which is attached your corroborative affidavit executed before L. R. Glavis, chief of field division, and bears date April 10, 1908. In connection with this affidavit of yours I will ask you to state whether that affidavit which you signed, appearing in this suit, was drawn in or out of your office?—A. This affidavit was in somewhat a little different form when presented to me, and the—this particular form was rewritten, here, by my typewriter.

Q. By your typewriter, at your dictation?—A. Yes, sir.

The COMMISSIONER. What exhibit is that?

Mr. SHERIDAN. Government Exhibit No. 15.

Mr. GRAY. If counsel will refer to the number instead of giving a description of the affidavit, I think the record would be shorter.

Mr. SHERIDAN. I give both number and description, and I have my own reasons for doing so.

Mr. GRAY. And I suggest that it is improper for counsel to state the contents of the exhibit; the exhibit speaks for itself, and if I recall his question a part of it is evidently left out.

Mr. SHERIDAN. That is my purpose in describing it at this time.

Q. Now, Mr. Smith, so I may fully understand you, this affidavit signed by you, being Government Exhibit 15, was prepared at your

dictation in your office?—A. Well, yes; it is a modification of an affidavit presented to me by Mr. Glavis.

Q. Yes; that is a modification dictated by you?—A. Yes.

Mr. SHERIDAN. I now desire to read into the record this corroborative affidavit of Mr. Smith—

Mr. GRAY (interrupting). I suggest that it is already in the record.

Mr. SHERIDAN. So were some of the affidavits read into the record yesterday by counsel for claimants (reading):

STATE OF WASHINGTON,

County of King, ss:

Charles J. Smith, after being duly sworn, deposes and says: I am the identical person who made Alaska coal entry No. 3, known as the Lyons claim in land survey No. 71. I have read the foregoing affidavit of Clarence Cunningham, made on the 6th day of March, who was, and now is, my agent. I am well acquainted with the most of the other coal land entrymen for whom Cunningham is agent, and know, of my own personal knowledge, that the statements made in that affidavit of said Cunningham are true in so far as they pertain to the Guggenheim syndicate and the understanding existing between the various entrymen as to the disposition of the claims. I know positively that the Guggenheims had nothing to do with our claims. We have understood among the entrymen that when title was secured we would probably form a company for the operation of the entire group on the grounds of economy.

(Signed)

CHARLES J. SMITH.

Subscribed and sworn to before me this 11th day of April, 1908, at the Empire Building, in Seattle.

(Signed)

LOUIS R. GLAVIS,
Chief of Field Division.

On this occasion I now wish to read into the record—

Mr. GRAY. Just a minute. I move to strike it out, for the reason it was not read into the record for any purpose, or the purpose of basing any interrogatories upon the affidavit.

Mr. SHERIDAN. The purpose will appear.

Mr. GRAY. And encumbering the record.

Mr. SHERIDAN. My purpose will appear later. I think it appears now. I wish to read into the record that part of Government's Exhibit No. 1 consisting of the affidavit of Clarence Cunningham, bearing date January 2, 1907, and executed before Special Agent H. K. Love. This is the same affidavit in which the pencil interlineations occur. Before reading it into the record, I will hand this Government Exhibit No. 1 to Mr. Smith and ask him to state if that be the same affidavit to which he referred when he spoke of having made pencil interlineations?—A. Yes.

Mr. SHERIDAN (reading):

AFFIDAVIT OF APPLICANT.

Clarence Cunningham, of Kayak, Alaska, being first duly sworn according to law, deposes and says:

That he is the identical person of that name who made a coal location of 159.241 acres of public land in the Kayak recording district, under the acts of Congress approved April 28, 1904, and said coal claim being known of record as the Maxine coal claim; that he is the same person who applies to enter said claim under United States Coal Land Survey No. 46.

That said location was made for the sole use and benefit of affiant and has ever since so remained, is now in his exclusive control; that at no time prior to the location or at such time or since has affiant entered into any agreement,

And from here on until I otherwise tell you, you are to underscore, Mr. Stenographer, the parts being underscored representing the parts

interlineated with pencil—now, continuing the quote, “express or implied.”

Mr. HUGHES. The statement is necessarily inaccurate, because the parts are shown and not interlineated.

Mr. SHERIDAN. We will stand corrected to that extent; the purpose will be the same.

Mr. GRAY. I suggest that the commissioner, as duly authorized, will stop the reading of exhibits already in evidence into the record unless it is for the purpose of basing an interrogatory.

The COMMISSIONER. The attorney will state his purpose, as I understand it, why he reads the extract from that exhibit into the record. Of course, the exhibit is a part of the record itself, and by mere reference to the exhibit the record will show, we understand, what was intended by it.

Mr. HUGHES. Surely.

The COMMISSIONER. Of course, the record is now getting to be quite voluminous with the statements of counsel, and it could be cut down, it seems to me, by simple reference to the paper.

Mr. SHERIDAN. I submit, if the commissioner please, that the interests of the Government require the reading of this affidavit into the record at this time.

The COMMISSIONER. Very well.

Mr. SHERIDAN. The part of the affidavit which is now to be quoted into the record is to be underscored, such underscoring to signify the erasure, or simply by lead-pencil lines through the words, as appearing in this affidavit, “express or implied, or pledged himself, by promise or otherwise,” and underscoring, beginning again, “express or implied,”—now underscoring—“by which the title to such lands or any part thereof or interests therein is passed to any other person or association whatsoever.” Before quoting further from this paper I wish to call attention to the fact that a lead pencil—

Mr. GRAY. Is that a part of the affidavit?

Mr. SHERIDAN. The record will show what I am saying. What is the last, Mr. Reporter? Please read it.

(Record read by the reporter.)

Mr. SHERIDAN. That the lead pencil mark would seem to include down to “or association whatsoever;” that a lead pencil mark is drawn through the words preceding “to the same extent,” as will show from the affidavit. Now, continuing quoting and underscoring, “that in event said claim goes to entry in the United States land office at Juneau, Alaska, the receiver’s receipt for the purchase price issues, he will not be under any contract or obligation or promise to sell or dispose of said tract to any person or persons or association or to put same into any company or joint holdings for any purpose or to otherwise dispose of the same, and that when the said land is patented he will be free in every way to hold said tract, to lease or sell it at any future time.” At this point there is a small x marked in lead pencil. I now invite Mr. Smith’s attention to the mark and I will ask him to state whether or not he made it, as near as he can recall?—A. I do not know.

Q. Can you recall whether or not, Mr. Smith, you made it for the purpose of inserting the subsequent pencil note on the end of the affidavit at that point?—A. Probably.

Q. Well, now, continue quoting and underscoring until I say to cease. “That he does not know any person or persons or asso-

ciation that intend or contemplate the leasing or purchase of said tract. That a valuable vein of merchantable coal has been developed by the affiant, through his agents, upon said tract as he verily believes; that the affiant has expended in making said location, in charges for the services of the agent in developing said vein of coal and in expenses incidental to the acquirement of title, the sum of"—underscore the amounts now to be given, said underscore to represent that said amount is set out in lead pencil—"twenty-two hundred dollars; that said sum was his own personal funds, or borrowed for such purpose, but without any agreement or understanding that the person loaning such, or anyone other than the affiant, should have any interest in or control over said tract."

"That this affidavit is made for the purpose of additional evidence of affiant's bona fides in the making of said coal location and coal entry, and for use as part of the record in said application. Signed, Clarence Cunningham. Subscribed and sworn to before me this 2d day of January, 1907. Signed, H. K. Love, special agent G. L. O."—then follows a pencil note as follows, which Mr. Smith states, I believe, was in his writing:

The WITNESS. Yes.

Mr. SHERIDAN (continuing). "That he has discussed with applicants of joint claims the desirability of jointly developing said properties and adjoining properties, for economical reasons, but is under no agreement to do so, and that if it should be done the operation of said claim would be for his exclusive account and benefit."

Mr. HUGHES. Are you making any question upon that? If you are through—I wish to be—

Mr. SHERIDAN. I am not through just yet.

Mr. HUGHES. I mean as to this particular matter.

Mr. SHERIDAN. I wish to state one further matter, and then the question upon which I shall predicate all these other matters will be read.

Mr. HUGHES. If the commissioner please, I wish at this time to move to strike from the record what counsel has stated and read, for the reason it is not proper cross-examination and unnecessarily cumbers the record. I desire to say only in explanation of the objection that if counsel has been literally transcribed by the stenographer, or literally reported by the reporter, his transcript would necessarily be what old women would call a "crazy quilt," and I want to suggest it, as we are now engaged in the inquiry, the basis of which is conspiracy, that if this course be continued we shall have to make, before this case is concluded, a charge of conspiracy between counsel and the reporter to defraud the Government and the claimants in this action.

Mr. SHERIDAN. The objection of counsel is so frivolous and absurd upon its face that I do not care to dignify it by making any answer to it. Now, Mr. Smith—

Mr. GRAY. I think we are entitled to a ruling on that.

Mr. SHERIDAN. The commissioner has no authority to strike such matters as this from the record, as I understand the commissioner's power, but he will speak for himself.

The COMMISSIONER. I believe the commissioner has authority to go to the extent of passing on obviously irrelevant matter. As I understand, counsel for the Government proposes to predicate a question upon this statement that he has made from the record—or from the

exhibit into the record here—and I believe that under those circumstances I will allow the statement read from the affidavit to remain of record for that purpose.

Mr. HUGHES. Permit me to suggest simply that counsel can predicate no question upon the record as made which he can not predicate upon the record which already exists in this case, and that the reading of exhibits formally introduced and filed and now in the custody of the commissioner is wholly unnecessary for the purpose of predicated questions upon them. This, I suppose—these exhibits can be shown the witness, and any question which can be predicated upon the record as it now stands upon the stenographer's notes in this proceeding can be predicated upon those exhibits, as they speak for themselves.

Mr. SHERIDAN. Then, I suggest that you inquire of counsel for the claimants, Mr. Commissioner, why it was that they quoted and read affidavits into the record, if it is so clear to them that it was unnecessary. The position they take is absurd.

Mr. HUGHES. If the Commissioner please, the reason for reading into the record that affidavit will be apparent, I think, to counsel if he reflected, and certainly, if he reflected in the light of experience. The affidavit read into the record yesterday was one that had not been identified in any form in this case, and is only deemed to be in the record by stipulation, and under the strict technical terms of that stipulation would not be accessible to counsel for defendants, and it was read into the record for that reason, and because upon it we predicated the direct question which could not be made clear in the record in any other way for the reasons I have stated.

The COMMISSIONER. I understand that the exhibits speak for themselves, and can be referred to as exhibits without quoting them in the record. But, in view of what the Government counsel, Mr. Sheridan, has stated, that it becomes necessary in order for him to ask a certain question that a portion or all of the affidavit be incorporated into the record by the stenographer, for this one occasion, I am inclined to allow it to stand in the record. I feel I have a right to prevent the record from being encumbered with what apparently, ordinarily would be unnecessary statements, but for this occasion, I am inclined to allow the matter to stand of record.

Mr. SHERIDAN. Now, Mr. Smith, you stated yesterday in your direct examination that the affidavit stated in Government Exhibit No. 15, and signed by yourself, stated that you were well acquainted with most of the other coal land entrymen, for whom Cunningham was agent, and as I recall your testimony, you stated at that time that you must necessarily have scanned the affidavit submitted to you for your signature rather hastily, since as a matter of fact, you only knew about five of them. Am I correct in that?—A. Yes, sir.

Q. In view of what you have testified to about it on cross-examination concerning this exhibit signed by you, being Government Exhibit 15, namely, that you dictated it yourself, do you still stand by your position?—A. I did not dictate that. It was copied from the other affidavit.

Q. Do I understand you to state, Mr. Smith, that this affidavit on the last page, which was signed by you—A. It was very largely copied from an affidavit presented to me by Mr. Glavis.

Q. Did I understand you to state this morning on cross-examination that you dictated this affidavit somewhat different from the affidavit which had been submitted to you?—A. I think there are some little changes at the last end of it, but the great majority of it was copied from the affidavit submitted to me by Mr. Glavis.

Q. Did you then make some changes in this as dictated?—A. I think so; at the latter end of it.

Q. Now, Mr. Smith, in connection with the reading in of this affidavit of Clarence Cunningham upon which pencil erasures appear into the record, I wish to ask you to state again, if you please, what your purpose was in erasing those parts erased on that affidavit with pencil?—A. I—my intention at that time was simply to reproduce the affidavit practically down to the words "Sole use and benefit."

Q. As I understood you, Mr. Smith, on your direct examination you made the choice of Mr. H. L. Hawkins for the purpose of the examination which you made of these entries?—A. Yes, sir.

Q. What did you know of Mr. Hawkins that led you to do this?—A. He had been a mining engineer of the Oregon Improvement Company for a number of years and had very intimate knowledge of coal entries and had made a number of examinations of coal lands that were submitted to that company at various times for purchase, lease, or otherwise.

Q. What contract did you have with Mr. Hawkins for the purpose of this examination?—A. I had no contract. Mr. Cunningham employed him to go up and look after the business, and they adjusted the compensation between them.

Q. You left that entirely to Mr. Cunningham?—A. Yes, sir.

Q. And you merely recommended his employment on what you knew of him?—A. Yes, sir.

Q. Did you contribute to the payment of his expenses in making this examination?—A. Yes, sir.

Q. In what way were you called upon to make these payments?—A. I paid a portion of his expenses and his services.

Q. What portion do you recall?—A. Well, I do not recall what portion. It was the portion ratably with these other two claimants.

Q. Was that portion your proportionate share for the examination of the entire thirty-three entries?—A. I think it was.

Q. Who submitted to you a statement of what your proportionate amount was?—A. Mr. Cunningham.

Q. And you paid that?—A. Yes, sir.

Q. Do you know how long Mr. Hawkins was engaged in this examination on the coal fields?—A. I do not. I think it was something like two months or a little over.

Q. Did Mr. Hawkins make more than one trip to Alaska for you and these other entrymen?—A. I do not recall any other.

Q. Who is this Mr. Jamme to whom you refer, and how do you spell his name?—A. Well, I will be blest if I know. It is J-a-m-m-e.

Mr. HUGHES. J-a-m-m-e. I don't think that is material, except that it might be quite material to the reporter to spell his name right.

Q. How do you understand it is spelled?—A. J-a-m-m-e.

Q. Who is he?—A. He is an engineer.

Q. Where does he reside?—A. Well, he has been in Alaska and he has been here, and I don't know where he is now.

Q. What special qualifications did he have that induced you to send him up to Alaska?—A. Well, Mr. Cunningham located him. I have had no knowledge of him up to the time Mr. Cunningham suggested his appointment, and he had looked up his qualifications. My remembrance is he had some special knowledge about ports and water—water.

Mr. HUGHES. Surveys?—A. Surveys; yes.

Q. Was any account submitted for his expenses to you?—A. The service and expenses were included in the report sent to me along with other expenses and services.

Q. By Clarence Cunningham?—A. Yes.

Q. And you paid your pro rata part?—A. Yes, sir.

Q. And the other 32 entrymen paid their part?—A. I assume so.

Q. Now, Mr. Smith, approximately, when was it that you first had any knowledge of the fact that any negotiations were being carried on or conducted with the Guggenheim interests concerning these coal entries now under investigation? I want you to give, as near as you can, the date when you first learned of it.—A. Well, I think it was the latter part of 1907.

Mr. GRAY. What was that question?—A. It was not in connection with the coal interests, but in connection with the railroad enterprises in Alaska.

Q. Concerning the building of a railroad into this coal field where these entries are?—A. Yes, sir.

Q. I understood you to testify in your direct examination yesterday that some time in May or June, 1907, that this matter was first considered. Was I correct in that?—A. Well, I was not sure. It was, I think, later than that. I am inclined to think it was the latter part of 1907.

Q. Now, I hand you Government Exhibit 10, and ask you to refer to dates appearing herein, and see if that will assist you in refreshing your memory as to the time when you first received notice of these negotiations.—A. Yes; I think, then, it was probably a month or six weeks—

Q. Before or after this date?—A. It was before that time; before I knew anything about it.

Q. This exhibit bears date at the conclusion thereof, July 20, 1907, doesn't it?—A. Yes, sir.

Q. It was before this?—A. Yes; it was probably a month or six weeks before that, that I ever knew of any discussion about this railroad over that part of the country.

Q. From whom did you learn of this discussion?—A. Well, I think I first learned from Mr. Cunningham; I am not sure—either Mr. Cunningham or Mr. Rust.

Q. Who was Mr. Rust?—A. Mr. Rust was the gentleman connected with the Guggenheim people.

Q. Did you know him personally?—A. I have met him on several occasions.

Q. When did you first meet him?—A. I think about two or three years ago, possibly; some other matters connected with the irrigation business.

Q. It was not in connection with this Alaskan coal matter?—A. No, sir.

Q. Did you ever have any conversations or negotiations of any sort, personally, yourself, with Mr. Rust, concerning these entries?—A. I think, just a short time prior to this time, probably a month or six weeks, I had either some discussion with him of it or with Mr. Cunningham, I don't remember which, because it is quite a while ago and I can not remember just whether it was before this time or about this time that he stated to me the Guggenheims were making an examination there at Katalla and were building a road up the Copper River, and they wanted to ascertain whether a port should be made at Katalla, or whether their road was apt to run to some other point, and if they ran to Katalla they could run a branch line up to the coal fields, there, that would serve any and all in there with transportation for all claims, and also for the people above there; in fact they could haul all the coal out of there in that entire district, and they were rather anxious to know whether the port there was a good port on their own account, as well as others, with reference to the coal.

Q. That was all the conversation you had with Mr. Rust?—A. Yes; that is substantially it.

Q. You made some mention, however, in your testimony yesterday, that the Guggenheims finally abandoned this proposition to put in the road at Katalla? Am I correct in that?—A. Yes.

Q. Do you recall when it was, approximately, that they did abandon this idea?—A. I think very shortly after this proposition was made; very shortly after this Salt Lake proposition was made.

Q. When you refer to the Salt Lake proposition, you refer, as I understand you, to your proposition set out in Government Exhibit No. 10?—A. Yes, sir.

Q. You are certain that the abandonment occurred after that, are you?—A. Well, our knowledge occurred afterwards. I don't know when. I have no knowledge of their affairs at all.

Q. As I understand you, on your direct examination, Mr. Clarence Cunningham brought in a copy of the proposition submitted at Salt Lake City to you?—A. Yes, sir.

Q. Have you that in your possession still?—A. No. He simply exhibited it to me.

Q. Oh, I see; he did not leave one with you?—A. No.

Q. Was there any reason why Mr. Cunningham should bring you a copy of that proposition?—A. Yes; I suppose so.

Q. What was it, as you understand it?—A. Well, there had been a call for a meeting of these people in Spokane. I was not present at that meeting, but the meeting, as I understand it, appointed this committee to go down to Salt Lake. Not being present there, and having a coal claim in that district, he probably brought it to me as an intimation of propositions that had been made in connection with the coal matters, and at that time knowing, as I had, that the final receipts for the property had been issued, and that we had, at Spokane, or some people there, undertaken to see, what, if anything they could do toward what they considered the development of their property, and see how many people, if any would join in it, and in what way; and I suppose he submitted it to me with the idea of interesting me with the proposition.

Q. Did you, together with the other entrymen, authorize any person to discuss this matter with the Guggenheim representative at

Salt Lake City, or did they go there voluntarily?—A. Well, I don't know.

Q. You did not authorize anyone, as far as you were concerned?—

A. No; I had no knowledge of the business until—either of the trip, or the results of it, until they returned.

Q. As I understand you, you do not recall, definitely, the date of this meeting at Spokane, Mr. Smith?—A. Well, I think it was about a week or ten days, something like that, just prior to this Salt Lake agreement. I do not recall it, however. I do not bear it in mind.

Q. The agreement bears date, July 20, 1907?—A. Well, I don't remember that.

Q. I now hand you register's final coal certificate of entry in evidence already under the stipulation with the original paper, for your entry, and ask you what the date of that paper is?—A. February 28, 1907.

Q. When Mr. Glavis came into your office to have you sign this affidavit, already referred to in Government Exhibit 15, which I exhibit to you this morning, he was accompanied, as I understand it, by Mr. Clarence Cunningham?—A. Yes, sir.

Q. Did Mr. Cunningham have anything to say concerning the purpose of being present there with Mr. Glavis at that time?—A. I don't remember.

Q. But he was present?—A. He brought him in, and introduced him to me.

Q. He was present at the time that you signed that affidavit?—A. Yes, sir.

Q. Now, in Government Exhibit 3, Mr. Smith, which contains a certified copy of what is known as the "Cunningham journal," I find that you have made payments, as set out in this journal, from February, 1903, down to some time in 1907 and that the total of those payments run up to \$3,850. Have you any reason to question the accuracy of that total that you have advanced that much on these lands?—A. No.

Q. Is it your understanding that this money was all expended in connection with the exploiting of that general area within the 33 entries and with the other purposes indicated in your testimony?—A. Yes, sir.

Q. You received statements of what those expenditures were from time to time from Mr. Cunningham, as I understand you?—A. Yes, sir.

Q. These statements of account you received of what these expenditures were from time to time from Mr. Cunningham, as I understand you?—A. Yes, sir.

Q. These statements of account, were they individual statements or did they set out the general transaction with regard to all the 33 entries?—A. They set out the work or expenses pertaining to this work and gave a portion that we were to pay along with—I think they stated the various amounts expended for the various claims.

Q. So it was not an individual account sent to you alone, but it was a general account to all, and yours was set out not specifically therein?—A. The account generally showed the total amount expended and the proportion between the payments, and drafts were then made for a lump sum as they continued the work or the exploration, or whatever it might be.

Q. Now, was this money sent by each of the entrymen to Mr. Cunningham in Alaska or was there a lump sum deposited in some bank from which he could draw from time to time?—A. Each man had a draft upon him.

Q. Were they all handled through the same bank?—A. I don't know.

Q. On page 1 of what is known as the "Cunningham journal," as it appears in this certified copy, set out in Government Exhibit 3, appears among other things the following statement: "After this is done each subscriber agrees to deed his interest to a company to be formed for the purpose of developing and marketing said coal and receive stock in the said company in payment for same, but it is further agreed that each subscriber shall have an eighth of his stock issued to Clarence Cunningham in consideration of his services in securing said land. This one-eighth interest to be issued to the writer of these pages is to be exclusive of his own holdings upon which he agrees to meet and make his payments in common with all others who enter into this agreement and is understood to be one-eighth of the entire stock of said company." What have you to say with reference to that statement?

Mr. HUGHES. Objected to as not proper cross-examination; it is not a statement made by this witness or made, as far as disclosed by the evidence in this case, with his knowledge or consent or over which he had any control; and we make the further objection because the question is predicated upon a quotation from a document which is not competent evidence for the introduction of it, as no foundation has been laid.—A. I made no such agreement.

Q. Did there ever exist any such agreement between you and Mr. Clarence Cunningham?—A. No, sir.

Mr. SHERIDAN. That is all, Mr. Smith.

Mr. HUGHES. I would like to ask Mr. Smith a question. I do not recall whether you have been asked whether you have ever been upon the land covered by this entry or the entries of any other claimants in this case?—A. No, sir.

Redirect examination by Mr. HUGHES:

Q. Mr. Smith, you were asked as to payments made by you, which counsel stated to you had footed from certain documents in evidence to a sum in excess of \$3,800, and asked you if you paid that sum to Mr. Cunningham. I will ask if, as a matter of fact, the total amount mentioned in the interrogatory don't include the amounts you paid to the Government?—A. Yes, sir.

Q. Did you pay them to Cunningham or did you pay it direct to the receiver yourself?—A. No; I paid it directly to the receiver.

Q. And if it is shown in any way, in any accounts from Mr. Cunningham, it was not by reason of your having remitted it to him?—A. No; he had nothing to do with it. I overlooked that.

Q. Now, counsel asked you as to the payment of others to Mr. Cunningham. Have you any personal knowledge either of the fact or the amount of payments made by any other entryman than yourself and the manner of payment?—A. No; I have not, except the assumption that they had done the same as I did. I paid by draft from time to time.

Q. And your answer to the question propounded by him was then merely a matter of assumption; that you supposed it was?—A. Yes, sir.

Q. As a matter of fact, have you, by any confidential communications with any of the others, ever ascertained from them, either at or subsequent to the time when they paid him, what they paid or the amount that they paid; and if so, to whom?—A. Well, I think one or two of them asked me about how much I had in it, in a general way, and I stated about how much; and they probably told me about how much, what total expenditures they had made in a general incidental sort of way.

Q. You spoke of having met with Rust in connection with an irrigation transaction. That was the Hanford Irrigation Company?—A. Yes, sir.

Q. Now, at the time you talked with Mr. Rust, I will ask you whether your conversation was one of negotiations?—A. No, sir.

Q. Respecting your own coal property, or with respect to any of the other coal properties in this Controller Bay or Bering River district?—A. No, sir.

Q. Just a casual conversation, in which he told you of the plant?—A. Yes; and their views with reference to railroad construction up there.

Q. And the port of Katalla?—A. Yes, and the port of Katalla; and probably may have gone into the question of where they would go or what port they would make, depending somewhat upon whether there would be any coal tonnage that they could handle.

Q. I will ask you this: If Mr. Rust, in that conversation or any conversation that you had with him, indicated that he had any part at all in any negotiations with the committee consisting of Mr. Cunningham, Mr. Campbell, and Governor Moore?—A. None.

Q. Did he allude to it in such a way as to indicate how much, if any, knowledge he had of it, or did he make any allusion to it?—A. Well, no; I have no recollection of his ever having made any.

Q. Did you ever authorize this committee or any member of this committee to represent you in any negotiations for the sale of your property, or your claim, or of any interest in it?—A. No, sir; I think I was appointed one of the committee at the Spokane meeting, but I did not go, and I was not present at the meeting. I had no part in the negotiations.

Q. Did you ever have any conversation with any member of this committee before they went to Salt Lake City in regard to their trip, and the business of their trip, and the negotiations they were expecting to conduct there?—A. I do not recall any. I think, Mr. Hughes, that I was probably asked by Mr. Cunningham or Governor Moore if I could go to Salt Lake City, and I said no. I am not sure about that, but I have a vague remembrance that I was.

Q. I will ask you, in view of your answer, whether you have any recollection of any conversation with either of them or with any other person prior to the time they went to Salt Lake with respect to negotiations—or I will ask you to state whether or not you were willing to sell the property on any basis, or if you had any such matter submitted to you until this proposition was submitted to you?—A. The only thing I recall was the question of transportation. The only thing prior to this meeting was the question of a railroad and the possibility of transportation.

Q. I do recall fully your testimony with respect to the reason given by you for objecting to the proposition between the committee and

the Guggenheims meeting at Salt Lake City, as shown by Government Exhibit No. 10, and I ask you therefore, now, whether at the time it was submitted to you, during your consideration of it, as well as your objection to it, you then knew that the Guggenheims were contemplating the abandonment of Katalla as a terminal point and harbor or had already done so?—A. Yes; they were examining it at that time and the impression was given us that they probably would.

Q. Abandon it?—A. Yes, sir.

Q. And that would involve much longer transportation?—A. Yes, sir; about 125 miles haul instead of 25.

Q. Which was one of the grounds of objection on your part?—A. One of the grounds; yes.

Q. I think you have answered the others?—A. Yes, sir.

Mr. HUGHES. You may examine.

Recross-examination by Mr. SHERIDAN:

Could you recall, approximately, how long it was after the 20th of July, 1902, that Mr. Cunningham came to you and showed you a copy of the offer of the Guggenheims?—A. Well, I think it was possibly a week. I don't know. To recall the exact date, I can not do it.

Q. That is, approximately?—A. Yes; closely afterwards.

Q. Does any such agreement exist between you and the Guggenheim syndicate or any other entrymen in this group at the present time?—A. No, sir; I can not answer, however, for anybody but myself.

Q. Just for yourself?—A. Yes, sir.

Q. You know nothing of such an agreement between the other entrymen and the Guggenheims?—A. No.

Mr. SHERIDAN. That is all.

Redirect examination by Mr. HUGHES:

Q. In connection with the questions last asked by the counsel I desire to ask you this question: Whether, since the rejection of this proposition, there has been any renewal of the negotiations to your knowledge, by this committee or by anyone else among the defendants, of the negotiations with the Guggenheims?—A. No definite negotiations of any kind that I know of. I think Mr.—I think I have been asked by Mr. Eccles, of the Guggenheim people, whether we would care to take up the matter again with them, and I told him, under present conditions, that I did not think we would as far as I was concerned.

Q. Do you recall when that was?—A. Well, I think probably it was some time in 1908; I don't remember. It is rather vague.

Q. Mr. Eccles was in the West?—A. Yes; he was; he came out and went to Alaska.

Mr. HUGHES. That is all.

Recross-examination by Mr. SHERIDAN:

Q. Is this Mr. S. W. Eccles?—A. Yes, sir.

Q. The vice-president of the American Smelting and Refining Company?—A. Yes, sir.

Q. And the president of the Copper River and Northwestern Railway?—A. Yes; I believe so.

(Recess taken until 2 p. m.)

NOVEMBER 26, 1909.—2 P. M.

INQUIRY RESUMED.

Appearances: Hon. William J. McGee, United States special commissioner; Mr. James M. Sheridan and Mr. William B. Pugh, counsel for the Government; Mr. E. C. Hughes and Mr. John P. Gray, counsel for the claimants.

HORACE C. HENRY, a witness produced on behalf of the claimants, being first duly sworn by the commissioner, testified as follows:

Direct examination by Mr. HUGHES:

Q. Where do you reside, Mr. Henry?—A. Seattle.

Q. How long have you resided in this city?—A. I came here in 1890.

Q. And have resided here continuously since that time?—A. Yes, sir.

Q. In what business have you been engaged, and in what business are you now engaged?—A. My business was building railroads—railroad construction.

Q. Have you during this period been engaged or interested in any other business in the city of Seattle?—A. Somewhat; yes, sir.

Q. Mr. Henry, in what manner and by whom was your attention first called to the matter of making a location of a coal claim in what is known as the Controller Bay district in Alaska?—A. Mr. Spencer, the cashier of the National Bank of Commerce, first mentioned it to me.

Q. Is he one of the locators? Did he have any interest himself?—A. Not that I know of.

Q. When did you ever talk with anyone that was interested, and with whom first, I mean?—A. Mr. Cunningham is the first.

Q. What is it?—A. Mr. Spencer told me a man named Cunningham was looking at it; he was being interested in coal claims in Alaska. He said that he told Mr. Cunningham that I might be interested. That is the first I heard about it.

Q. You have now given what Mr. Spencer told you then in regard to the matter?—A. Yes, sir.

Q. And I understand you to say Mr. Spencer told you that Mr. Cunningham was interested in—A. He told me Mr. Cunningham had spoken to him and that he told Mr. Cunningham that I might be interested; that he was not himself.

Q. Following that, did Mr. Cunningham come to see you?—A. He did.

Q. Now, you may go on and state what conversation occurred between you and Mr. Cunningham at that meeting.—A. I do not remember very much, except that I think he had an analysis of coal, and told me that he was acting as agent for the parties up there locating some claims, and gave me some names. They were people that I had never heard of before, except Mr. C. J. Smith and Governor Moore and Mace Campbell and Mr. Finch; I knew them by reputation. I do not know what all he told me.

Q. Anything said about whether you would care to have him locate a claim for you?—A. Yes; I told him to go ahead and locate one.

Q. Did you ask him anything about what expense would be involved, approximately, for his services? If so, what was said on that subject?—A. I do not think I did. I told him to draw on me for what he wanted, and he always did.

Q. When did this conversation occur and where?—A. It was in the National Bank of Commerce, I think, or in my office right in the rear.

Q. And when?—A. I think it was some time in 1904; I can not say just the exact time.

Q. I will ask you if shortly after that a power of attorney was either sent to you or handed to you, to be executed by you, appointing Mr. Cunningham your agent and attorney in fact to do whatever was necessary in making this coal location in Alaska?—A. There was; I do not know whether he handed it to me or whether he sent it to me.

Q. I show you from the government files, in what is designated in the land office envelope and paper as coal entry 4, and which by stipulation are evidence in this case, this power of attorney, and I will ask you if that was executed by you? That is your signature?—A. That is my signature; yes, sir.

Q. This purports to bear date November 14, 1904. Now, about how long prior to that was it that you had your first conversation with Mr. Cunningham?—A. I could not tell you. I should think it was two or three months perhaps. I am not sure.

Q. I find in the same file of the government papers an affidavit purporting to be signed by you on the same date, November 14, 1904. Will you look at that affidavit and state whether that is your signature?—A. It is; yes, sir.

Q. Mr. Henry, the two papers that have been shown you were executed at the same time and place, were they? They appear to be on the same date.—A. Yes, sir.

Q. Now, I call your attention to the following language in your affidavit:

I further swear that I am now in the actual possession of the said coal lands through my agent and attorney in fact, and make entry for my own use and benefit and not directly or indirectly for the use and benefit of any other party.

In order to afford a basis for any cross-examination that counsel for the Government may desire to ask in this particular, I now propound this question to you: Was that statement true?—A. It was.

Q. Had you at that time had any conversation of any kind relating to your entry or your proposed entry with any other person than Mr. Cunningham, except the conversation you have related with Mr. Spencer?—A. I never had any conversation regarding the claim with Mr. Spencer. I never had any conversation with Mr. Spencer after I told Cunningham I would take a claim, and I never, up to that time, had any conversation with anyone in reference to the claim.

Q. So that all the conversation you had had upon this subject was with Mr. Cunningham?—Yes, sir.

Q. And was there more than one conversation with Mr. Cunningham prior to the execution of these papers in relation to the matter?—A. I do not think so. I saw him very seldom. There might have been, but I do not remember it.

Q. Prior to the time of signing this affidavit and the 14th of November, 1904, had you had any conversation with Mr. Cunningham, in which—A. I do not remember any.

Q. In which you were asked if you would hold this entry and carry it to patent under an agreement or understanding that it should be transferred to any corporation to be organized at any time or any corporation then in existence?—A. I did not. I do not remember having any conversation.

Q. Did you at any time prior to signing this affidavit have any conversation with him with reference to your holding this claim or carrying it to patent and thereafter holding it for the purpose of joint use or joint operation with any other entryman represented by him?—A. No, sir.

Q. Did you have any conversation or understanding with Mr. Cunningham by which any interest in your claim should directly or indirectly endure to the benefit of Mr. Cunningham or any other person?—A. No, sir.

Q. I show you now from the same government files a paper purporting to be an application for patent, purporting to be sworn to on the 30th day of January, 1906, before J. Warren Upper, a notary public, and ask you if that is your signature?—A. Yes, sir.

Q. I call your attention to the following language contained in this sworn application:

I make the entry for my own use and benefit and not directly or indirectly for the use or benefit of any other party.

I will ask you whether at that time or at all times prior thereto the statement made was true?—A. It was.

Q. Now, Mr. Henry, had you had any conversations with Mr. Cunningham between the date of your power of attorney, November 14, 1904, and the date of this application, January 30, 1906?—A. I do not remember any.

Q. Did you have any conversation with any of the other defendants in this action who were represented by Mr. Cunningham in making their coal location in this same district in Alaska between the dates I have mentioned; and if so, with whom?—A. I might have talked to Mr. Smith about it. I can not remember whether I did or not.

Q. Can you say whether you ever talked with any of the other entrymen?—A. I do not think I have ever seen them.

Q. In any conversation with Mr. Smith was there ever any agreement or understanding, expressed or implied, between you that your location and your title to this property, when carried through to consummation, should be held for his benefit or for the benefit of any of the other entrymen, in whole or in part?—A. There was not.

Q. In any conversation with Mr. Smith was there any understanding or agreement in whole or in part?—A. There was not.

Q. In any conversation with Mr. Smith was there any understanding or agreement, expressed or implied?—A. I did have in 1885—

Q. 1905?—A. 1905, when Mr. Hawkins was sent up there; I think I talked with Mr. Smith then.

Q. What was your conversation with Mr. Smith on that occasion?—A. I think that he told me that some claimant wanted to send a man up there and get a report and had asked him to secure a man for the purpose, and told me that he had got Mr. Hawkins or would get him, and I thought it was a wise thing to do,

because I knew about Mr. Hawkins, knew he had had experience, had had charge of the Pacific Coast Company's coal mines.

Q. Now, in that or any other conversation with Mr. Smith between the 14th of November, 1904, and the 30th of January, 1906, was there anything said in respect to your acquiring title to this coal claim and turning it over to any corporation?—A. No, sir.

Q. Or in respect to any understanding that you should hold your claim in whole or in part for the use or benefit of any of the other entrymen?—A. No, sir.

Q. Or that at any time after your location or after your final payment the claims should be operated for the benefit of yourself and the other entrymen jointly?—A. No, sir.

Q. Was there ever any negotiations or any conversation you had with any person prior to the making of this application for a patent to the effect that anybody should have an interest, directly or indirectly, in this claim, or any dominion or control over it or right to the profit or advantage that might arise out of it, except yourself?—A. No, sir.

Q. I now show you an affidavit purporting to be signed and sworn to by you on the 7th day of December, 1906, which is taken from the same government files, and which is one of what has been characterized in this proceeding as the Love affidavit, and ask you if that is your signature on the Love affidavit?—A. Yes, sir.

Q. Did you write the words that appear in ink below the jurat of the notary public?—A. This (indicating)?

Q. Yes, sir.—A. That is my writing and my signature.

Q. Will you state the circumstances connected with your signing this affidavit as you recall them?—A. I can not. I think though—I think that Mr. Cunningham brought it in the office. What is the date of that?

Q. This is on the 17th day of December, 1906.—A. I wish to make a statement that in that spring of 1906, I took a very large contract with the Milwaukee Company to build about 500 miles of railroad, and from that time on until along in 1888—

Q. 1908?—A. 1908. I had 5,000 or 10,000 men at work and I had very little to do and very little time to pay to the coal claim or anything else besides that business.

Q. In this affidavit which I have just shown you, you state, after referring to the sum of money that you have paid in the development work in connection with this claim and as follows:

That said sum was his own personal funds or borrowed for such purpose.

A. What is that?

Q. That said sum was his own personal funds—referring to yourself being put in the third person?—A. Yes.

Q. Or borrowed for such purpose, but without any agreement or understanding that the person loaning such or any other one than the affiant would have any interest or control over said tract. Is that statement correct?—A. It is.

Q. As a matter of fact this was typewritten when it was brought to you to sign?—A. Yes, sir.

Q. And you were not borrowing or contemplating borrowing any money at that time?—A. I did not borrow any; not for this purpose, at any rate.

Q. You also stated in this affidavit as follows:

That said location was made for the sole use and benefit of affiant and has ever since so remained and is in his exclusive control; that at no time prior to the location or at such time or since has affiant ever entered into any agreement, expressed or implied, or pledged himself by promise or otherwise, expressed or implied, by which the title to said land, or any part thereof or any interest therein, is to pass to any other person or association whatsoever; that in event said claim is entered in the United States land office at Juneau, Alaska, and the receiver's receipt for the purchase price issued he will not be under any contract, obligation, or promise to sell or convey said tract to any person or persons or association, or to put the same into any company or joint holding, for any purpose, or otherwise dispose of same, but will be free in every way to hold such tract, or to lease or sell it at any future time.

Are those statements true, Mr. Henry?—A. They are.

Q. Were they at that time?—A. They were.

Q. Mr. Henry, did you know anything about any negotiation or conference among any of the claim owners with reference to the appointment of a committee to confer with representatives of the so-called "Guggenheim interests" at or about the time when such negotiations are said to have occurred?—A. I can not say when I knew about it, but I did know about it; I heard about it.

Q. Do you remember through whom you heard about it?—A. No, sir; I do not. It must have been through Mr. Cunningham or Mr. Smith. I do not think I have ever seen any more than that.

Q. Now, did you at any time about or shortly following the 20th of July, 1907, receive or see a copy of Government Exhibit 10, which I now hand you for examination?

Mr. SHERIDAN. What date do you fix all this?

Mr. GRAY. The 20th of July.

Mr. SHERIDAN. I thought he said May.

Mr. HUGHES. I corrected that.

A. I do not think I ever saw it.

Q. State your best recollection of what you did learn in regard to the negotiations indicated by this memorandum which I have just shown you, Government Exhibit 10, and what action, if any, you took in respect to it.—A. I do not know. I think that when I heard about it, I thought it could be done. Something of that kind, if it could be done, would be a good thing to do. That is all. I never attended any meeting about it.

Q. Did you ever authorize this committee, consisting of Mr. Campbell, Mr. Cunningham, and Governor Moore, to act for you in respect to any such negotiation?—A. I do not think so; I do not remember to have.

Q. Now do you recall the circumstance of signing an affidavit which was prepared by one L. R. Glavis?—A. I remember—I think Mr. Cunningham brought Mr. Glavis into the bank and introduced him to me, and that he had an affidavit, it seems to me. He said to me—said he had an affidavit he wanted me to sign, or something to that effect, and I asked him if it was all right, and he said, yes. I know I met Mr. Glavis. I think I made an appointment with him, and he came to the office, perhaps; but I signed it.

Q. Do you remember what conversation you had with him?—A. I do not, except in a general way that I got the impression that this Guggenheim—that the department was dissatisfied with the dickering that had been going on with the Guggenheim interests, and this

was for the purpose of clearing it up. That was the impression I got from it, and that is what I think Mr. Cunningham told me. That is what the affidavit was for, to clear up the Guggenheim affair.

Q. Now at this time I see you are not able to have your signature authenticated because I see, on the following day, the 22d of April, you mailed it to Mr. Glavis.—A. Yes, sir; I remember about that. I did not know his name. I was not sure of his initials. I think I sent it to him at Portland.

Q. Are you distinct in your recollection that you did meet and talk with Mr. Glavis before signing this affidavit?—A. Yes, sir; I know I met him right there, very shortly, if my memory is correct.

Q. Do you remember, at the time of signing this, you examined this paper after having talked with Mr. Guggenheim, Mr. Glavis, and Mr. Cunningham about it?—A. No; I did not.

Q. About what, for what reason, did you sign that?—A. Cunningham told me it was all right; that is the reason. It is a mighty poor excuse.

Q. This is your signature?—A. Yes, sir.

Q. You say, or are made to say, among other things, in this affidavit:

I am well acquainted with most of the other coal land entrymen for which Cunningham is agent.

A. That is absolutely a misstatement, and that is the reason I know I could not have read it. I do not know any of them but three.

Q. Any of them but who?—A. Any of them but three others. I think I have seen Governor Moore before that time and Cunningham and Mr. Smith.

Q. You say you know, of your own personal knowledge, that the statements made in the foregoing affidavit are true; that is, referring to the affidavit of Cunningham. Did you observe that statement, or was it correct at the time, or did you observe it at the time of your signing this paper? In other words, did you know anything, personally, or have any personal knowledge of these negotiations as you see here?—A. I did not. Of course it is a humiliating admission.

Mr. SHERIDAN. I agree with that.

Mr. HUGHES. [Laughing.]

A. But I was an awfully busy man and I did not pay any attention to the coal claims at any time, but very little.

Q. There is in this affidavit the statement:

We have understood among ourselves that when title is secured we will form a company and combine the entire group, for the conditions are such that one claim can not be profitably mined, as anyone familiar with coal mining appreciates.

Will you explain what was in your mind with respect to this language?—A. Why, no man with any sense would think he could go up in Alaska there, 25 miles from the coast, and operate a coal mine alone. If this were operated, it would have to be some kind of an operation together.

Q. As a matter of fact, had you any conference or meeting with any of these people or any conversations with any one of them or any correspondence with any of them with reference to any understanding or agreement prior to the time you made your final payments and

obtained your receiver's receipt that a company would be formed or a group of claims combined?—A. No, sir. I never had any correspondence with any of them at any time.

Q. Do you know of any negotiations looking to any such end ever having taken place prior to these negotiations respecting the Guggenheim proposition?—A. That is all.

Q. And an action together for that purpose?—A. That is all I ever heard of.

Q. Did you have anything else in mind at the time you signed this from anything that was said or being called to your attention respecting this affidavit?—A. No; that means, if it means anything, that I know it would cost \$1,500,000 or \$2,000,000 to get that coal out—get it to a harbor—and there is no man could do it in one claim. I never concerned myself about how it would be done, because I knew the coal was there and the coal was wanted on this coast by the people and ships moving up and down and also by the Government. If there was any limitation that restricted that so it could not be operated, it would be done away with; I always felt that way about it.

Mr. HUGHES. Take the witness.

The WITNESS. Can I make one statement about the Guggenheim business?

Mr. HUGHES. Yes, Mr. Henry.

Mr. HENRY. Mr. —, I understood that Mr. Cunningham had consulted eminent counsel that we had a perfect right to talk with these people, as I remember it.

Mr. GRAY. Is that all. Mr. Henry, you may take the witness.

Cross-examination by Mr. SHERIDAN:

Q. How old are you, Mr. Henry?—A. Sixty-five years old.

Q. All of the time you have been in Seattle you have been in the railway-contracting business, as I understand it?—A. Yes.

Q. Are you interested in any other business here; and if so, what?—A. Why, I am interested—I am interested here in banks, somewhat.

Q. What banks?—A. The National Bank of Commerce and the Metropolitan Bank.

Q. Are any of the other entrymen now concerned in these entries under investigation associated with you in any of these business concerns?—A. I think that Governor Moore has twenty shares of stock in the Metropolitan Bank, which commenced business this last February—the first of February. I am not positive of it—but that is my—

Q. You are not positive?—A. No one else who has a claim up there is interested in any banks that I am.

Q. What position do you occupy in these banks that you refer to, Mr. Henry?—A. I am chairman of the board of directors in the National Bank of Commerce, and president of the Metropolitan Bank. And I ought to add that I am president of the Pacific Creosoting Company, that does a large business in its plant at Eagle Harbor. I am also president of the Northern Life Insurance Company.

Q. Now, Mr. Henry, we would like to have this story in your own words of exactly how you became interested in these Alaska coal claims. Just give us, as briefly as you can and yet as accurately as possible, your connection with the matter.—A. Well, the first that

they were brought to my attention was by Mr. Spencer, cashier of the National Bank of Commerce. He told me that a man by the name of Cunningham had been talking to him about some coal lands in Alaska, and that he was acting for some people up there as agent, and he told him that he was not or could not interest himself in it, but he thought I might—he might get me to. And some time after Mr. Cunningham came to me and I think he had a sample of coal.

Q. Now, could you recall at this point just approximately the dates when Mr. Cunningham first appeared?—A. I could not.

Q. You can recall the year?—A. Yes; it was approximately 1884; I am not sure.

Q. You mean 1904?—A. Yes; 1904.

Q. Very well.—A. And he named over to me—he told me about the field up there, and named a field up there, and named over to me certain men who had taken claims, none of whom I had ever heard of before, except Mr. Campbell and Mr. Finch. I knew them by reputation, and Mr. Smith. I told him I would take a claim.

Q. Did you at this time require any credentials from Mr. Cunningham, or anything concerning him—to know who he was—or anything about him or whether he had knowledge of such matters?—A. I did not, in fact; but he named Mr. Smith and some more. He named some more, a few who I knew were reliable business men. The fact that they had gone into it was all I needed of him.

Q. Did he have anything with him to show you they had actually gone into it?—A. I think he just gave me the names; that is all.

Q. Very well; continue, please.—A. Why, the next I remember about it was when Mr. Smith told me about Mr. Hawkins going up there to see if there was a chance to get a railroad in up there.

Q. Did Mr. Smith advise with you about the employment of Mr. Hawkins before his employment?—A. He did not.

Q. Were you consulted at all about Mr. Hawkins's employment?—A. No, sir; never. I knew Mr. Hawkins very well and I thought he was just the kind of a man they wanted—we wanted.

Q. Did you contribute your pro ratio to paying Mr. Hawkins's expenses for this investigation?—A. I expect I did; I don't know.

Q. Were any drafts drawn on you for such purpose, so far as you know?—A. They were drawn on me for some purpose frequently.

Q. By whom?—A. By Mr. Cunningham.

Q. But you do not know the details of those expenditures?—A. I do not; no, sir.

Q. Well—continue, please.—A. I remember about being—I remember sending money to the receiver along late in 1906. I think it was before that I had been making payments to Mr. Cunningham.

Q. Yes?—A. I signed this application and affidavit that he brought in, and I got a letter from Mr. Cunningham telling me to send the money to Mr. Mullen, I think.

Q. The receiver of the Juneau, Alaska, land office?—A. Yes; which I did. I think I got the money and sent it by express, and I got a letter back from him saying, on account of some departmental order, he could not give me a receipt for it then, but he did send me a receipt for it soon afterward. I have got that receipt.

Q. Now, are there any other matters in connection with this transaction that you recall—any further history of this entry of yours and

these others having the adjoining entries?—A. Well, I remember the talk about the Guggenheims.

Q. Just give us again your understanding in your own words concerning that transaction.—A. I don't remember very much about it. I was perfectly willing, if there could be made some arrangements to haul that coal out. I did not care who it was made with. I thought it would be a wise thing to do. I thought we had a perfect right to do it. I had no question—

Q. To do what?—A. To arrange with someone to haul it out if we could; but I had nothing directly to do with it, but I think I heard of it, I must indirectly. I never was consulted about it, I know that.

Q. How did you get word of the fact that there was such negotiations at all?—A. I could not tell you, unless Smith or Cunningham or Governor Moore; I think I knew Governor Moore then. Either of these gentlemen might have told me about it.

Q. Yes; do you recall—A. I remember hearing that they had abandoned Katalla, and if they had anything to do with the field they would have to haul that coal more than 100 miles.

Q. Do you recall when they abandoned Katalla?—A. When?

Q. Yes.—A. Oh, I think some time in 1907.

Q. About what month, approximately?—A. Oh, I can't tell you; I don't know. I simply heard it.

Q. Was it prior or subsequent to these negotiations at Salt Lake City with the Guggenheim representative?—A. I can not tell you. I think it was afterward. I think at that time they talked of just hauling it either to Katalla or right down to some other place—some other safe harbor near by—right down to the coast, 25 miles or something like that.

Q. Now, did anything transpire later on in connection with this matter that you know of? Were there any meetings held or any correspondence had between you and the other persons?—A. I never had any correspondence with anybody at any time about it.

Q. Did you attend any meetings in this connection?—A. I never attended any meetings, except about the railroad I told you about.

Q. What meeting did you have about that matter, and who were present at it?—A. I think Mr. Smith and Mr. Cunningham.

Q. Who else?—A. I don't know whether Governor Moore was there or not.

Q. About how many persons present at that meeting?—A. There was not three or four.

Q. Where was it held?—A. In the bank.

Q. In what bank?—A. Mr. Smith's office, I guess.

Q. What bank?—A. In the National Bank of Commerce.

Q. In Seattle, Wash.?—A. Yes, sir.

Q. When?—A. I can not tell you the exact date.

Q. Do you recall the year?—A. I think it was in— I can not remember when; 1906 or 1907.

Q. 1906 or 1907, but you can not recall which?—A. No, sir; I can not.

Q. Subsequent to your becoming interested in the Alaskan field, there, through Mr. Cunningham, as already described by you, did you, or did you not, receive any statement of account from Mr. Cunningham?—A. I don't remember ever receiving but one. I am sure I received one.

Q. I now hand you Government Exhibit 5, and ask you if you received such an account from anyone, from Mr. Cunningham or anyone else?—A. I can not tell you whether I received this or not. I remember certainly I received one. I don't remember paying any particular attention to it.

Q. I now hand you Government Exhibit 6, and ask you if you never received such a statement?—A. I do not remember; simply that I can not tell you. Not that I know of.

Q. I hand you Government Exhibit 7, which is the report of H. L. Hawkins on this group of entries now under investigation, and I will ask you if you ever saw this report before?—A. No, sir; I did not. I did not see it.

Q. I now hand you herewith Government Exhibit 8, and ask you if you ever saw this before?—A. No; I never saw it.

Q. I now hand you Government Exhibit 9, and ask you to state whether or not you ever saw this statement before?—A. Mr. Sheridan, I just remember of receiving one, and that is all; and I don't know which it was.

Q. I see.—A. I know it was two or more years ago; I think it was two years ago.

Q. I now hand you Government Exhibit 10, which is what is popularly described in evidence as the Guggenheim memorandum, and ask you to state if you ever saw that before?—A. No, sir; I did not see it. I don't believe I ever did.

Q. I now call your attention to Government Exhibit 22, and ask you to look at it; look it over, merely for the purpose of refreshing your memory to it, as I have some questions which I am about to propound to you. [Handing witness paper.] I will ask you if you recognize this as the affidavit already examined by you and concerning which you have given testimony in your direct examination?—A. I recognize the signature; that is all.

Q. Now, give us again, Mr. Henry, the circumstances under which you signed this affidavit, just in your own words.—A. Of the Glavis affidavit?

Q. Yes.—A. Well, sir, as near as I recollect, Mr. Cunningham brought Glavis into the bank and introduced him to me. I don't know whether—I think it was in the bank, and I think I made an appointment, and told Mr. Glavis when to be back or something of the kind, and I think Mr. Cunningham had an affidavit with him, or if he did not have it with him there was another affidavit to sign, and I had got in the habit of signing affidavits and kept it up, and I asked him if it was all right, and he said yes.

[Mr. Hughes laughs.]

Q. Mr. Cunningham said it was all right?—A. Yes; and Mr. Glavis said it was all right, too, when I signed it.

Q. Your attention was called by counsel for claimants to statements in this affidavit to the effect that no man could operate a coal mine alone in Alaska, and I believed you expressed your opinion that that was your judgment in the matter?—A. It seems so; yes.

Q. You agree with that statement?—A. I mean successfully.

Q. Yes; you agree with that statement as set out in this affidavit as I have stated it to you?

Mr. GRAY. Show him the statement.—A. Which do you mean? I don't agree—I never read that affidavit. I dissent entirely to this, it

sets forth here, "I am well acquainted with most of the other coal land entrymen." Well, that is false.

Q. Yes.—A. However it got there. I never knew them. I don't now know only Governor Moore and Mr. Cunningham and Mr. C. J. Smith. That is to say, I have met Mr. Finch and Mr. Campbell here about a year ago. I would not know Mr. Finch if I met him—I would not recognize him on the street. I might possibly Mr. Campbell. Three or four years ago I met Mr. Piggott, and he introduced me to Mr. Wick down on the tide flats here, and he says, "You have got a coal claim up there of some kind," and that is all that passed between us; and I have never seen him since, and I would not know him at all if I met him. That is the reason I said I could not have read it. It is so absurd.

Q. Yes?—A. Any of these men could get on the stand and swear they didn't know me.

Q. Now, Mr. Henry, with reference to this last sentence in this affidavit signed by you, I will ask you to read it and say whether it is true?—A. Why, we never had any understanding among ourselves at all. Never heard about forming any company among ourselves.

Q. Do you recall having read this last part of the affidavit which I just handed to you, wherein it states, "Since conditions are such that one claim could not be profitably mined, as anyone familiar with coal mining appreciates." Do you know whether you read that at the time?—A. I don't remember reading it, and I always knew, in my own mind, that a single claim could not be operated up there; that is, successfully. I always thought it would cost at least \$2,000,000 to build a railroad there, and docks, and coal carriers, and develop the property and coal bunkers, and it would cost as much for one claim as it would for all of them; always had that feeling in that mind, and I never made any agreement; don't think I talked with anybody about it. I might have talked with Smith, perhaps, but I don't think anyone else.

Q. I now invite your attention to a letter purporting to be signed by you dated Seattle, Wash., April 22, 1908, and which is a part of Government Exhibit 22, and ask you to state if you recall having sent that letter back with the signed affidavit to which it is attached?—A. Yes; I remember sending—I remember about the initials of Mr. Glavis's name. I don't know where I saw his name, whether it was in the—well, it was there, you can see [pointing], in the affidavit; I did not know that letter, what that letter was, you see it is indistinct.

Q. Yes. You recall, however, having signed that letter, which is signed by you, which is a part of this exhibit?—A. Yes; I think that is the reason I remember it.

Q. Can you tell whether this letter was sent out on the same day that Mr. Glavis appeared before you on that occasion for the purpose of having the affidavit or the day following or several days following?—A. Oh, I know it was afterwards. I think the date will tell—well, it is the next day, according to this.

Q. The next day?—A. After this date; yes.

Q. Then you had this affidavit in your possession until the next day?—A. I don't remember. I don't know when I got the affidavit. He brought it to me; I don't understand why I did not send it right off. I think it was.

Q. I observe, Mr. Henry, that it is dated April 21, 1908, and that the letter returning it is dated April 22, 1908. From that, I assume you had it over night.—A. Oh, it might have been; I could not say.

Q. But you did not read the affidavit?—A. I could not have heard it. I don't remember anything about it.

Q. I now hand you Government Exhibit No. 29, and ask you to state what it is, and if that "H. C. Henry" herein referred to is identical with yourself?—A. Yes; I remember about that.

Q. Tell us what you know about that.—A. I remember we had a meeting in Mr. Smith's office. We organized that company. I forget who the officers were.

Q. Was this company which I observe is referred to in this document, Government Exhibit 29, as the Bering River Railroad Company, was it organized for the purpose of handling the coal that might be developed from the 33 claims now under investigation?—A. No; not for that purpose, but for the purpose of securing the right of way before somebody else got in and cut us off, as I remember it.

Q. Give us the history of this organization, as you understand it, briefly.—A. Well, I don't know as there is very much to it that I remember, except we were there and organized that railroad, which I was strongly in favor of because I thought if there was only one route out, and somebody else got in there ahead of us, and anybody that there would be—

Q. You have no reason, I assume, to question the accuracy of the list of officers given in this certified copy of the articles of incorporation?—A. No; I don't question it.

Q. Were all of the 33 entrymen of the entries now under investigation concerned in this matter?—A. I do not know that any of them were except those who were there in the office. I never heard that they were.

Q. Were there any minutes kept of the meeting held concerning these matters?—A. I can not tell; that is the only meeting ever held.

Q. Was there any minutes kept at that meeting?—A. I do not remember there was or not.

Q. Where was the meeting held?—A. It was in Mr. Smith's office.

Q. Here in Seattle?—A. Yes, sir.

Q. Some time prior, I assume, to the date of this instrument, which is June, 1906?—A. I can not tell you when it was.

Q. You do not recall anything about it?—A. Of the time! No, sir; I don't. I can not.

Q. Can you say whether it was the intention of this company to have all these entrymen stockholders in that company?—A. I don't think that question was ever discussed at all—simply for the purpose of securing that right of way before anybody got in there and cut us out.

Q. Did you have any exact route—A. We did not know where we were going; we did not know whether we would go to Katalla, or down the Bering River, or where we would go; didn't know anything about it; but Cunningham told us that he had reconnoitered the route and road naturally to get to the ocean with it, and that would be the only chance for the road down that way, and we thought we ought to take steps to hold it. That is all. There never was any plans made to build it, or anything of the kind.

Q. Yes. Do you recall if prior to the execution of this instrument—that is, prior to the 11th of June, 1906—you or any other of the signers of this instrument had any discussion concerning the parts that any of the other entrymen now under investigation were to have in this railway?—A. No, sir; I do not think so. I am sure I never had any discussion with them, and furthermore don't know anything about it.

Q. Do you know of any correspondence in existence concerning this road?—A. I do not. I never had anything to do with any.

Q. Could you, from what you recollect, state affirmatively that the other entrymen in this group of entries had no interest, nor was it contemplated that they should have any interest, in this railroad?—A. I do not remember that the question ever came up at all.

Q. So that the transaction was merely between Frederick Burbridge, Clarence Cunningham, Miles C. Moore, H. C. Henry, and C. J. Smith?—A. Yes, sir. I suppose that Cunningham had paid out the money to get it done. I don't know who he was charging it to, but—

Q. Do you know whether he was acting for himself individually or for the other entrymen?—A. Why, he was acting for himself, I suppose. Those that organized it anyway.

Q. I now hand you Government Exhibit 3 and invite your attention especially to that part of it purporting to be a copy of what is known as the Cunningham journal, and ask you to scan it and state if you know anything of the original of which it purports to be a copy, and, if so, what?—A. It is not necessary for me to scan it because I never heard of it until Cunningham told me about it. I did not know he kept any books.

Mr. HUGHES. Did you say Cunningham told you?—A. He came to me and told me that Glavis had stolen a little memorandum book, and that is the first I heard of it.

Q. And that is all you know about it?—A. Yes; that is all. I never saw the book and never heard of it in the world until he told me it was stolen from him.

Q. You don't know that yourself; that is merely what Cunningham told you?—A. About it being stolen?

Q. Yes.—A. No; I don't know only what he told me.

Q. In view of the statement you have made concerning Mr. Clarence Cunningham's representations as to affidavits, do you consider that statement by him reliable?

Mr. HUGHES. I object to that as incompetent, and not cross-examination, calling for the conclusion and opinion of this witness, and attempting to impeach the credibility of the statement of another witness.

Mr. SHERIDAN. Will you just read the record?

(Record read by the stenographer.)

Mr. HUGHES. Which one do you mean?

Mr. SHERIDAN. The statement that Mr. Glavis had stolen this book or any statement that Mr. Cunningham made, and what you have stated in regard to the representations made by him about these affidavits which he signed?—A. Do I think Mr. Cunningham told me the truth when he stated Glavis stole it?

Q. Yes.—A. Yes; I do.

Q. So notwithstanding his unreliability in affidavits you believed him in this respect?

Mr. GRAY. Just a minute—

Mr. HUGHES. That is not a proper question for this counsel to propound to the witness. It assumes a fact or a conclusion which is only to be drawn by the inquiring body, and it is not proper for this witness to make a statement of this kind, based upon a question calling for an opinion of the witness.

The COMMISSIONER. I will sustain the objection on that ground.

Mr. SHERIDAN. The answer is not material, but it is a circumstance expressing the view of the witness.

Mr. GRAY. It is not material and it is not professional.

Mr. SHERIDAN. I do not intend to pay any attention to these statements which have been made; they are made for the purpose of display and not as statement of fact.

Mr. HUGHES. We agree with counsel, and think the record will abundantly disclose that fact.

Mr. GRAY. I move to strike it out.

Q. Do you know whether, at the present time, as far as you have actual knowledge, there is any understanding between the entrymen to jointly operate this property?—A. There is positively not, as far as I know.

Q. Do you know if there is any understanding or any agreement with what is popularly known as the Guggenheim interests for the purpose of transferring this property or any part of it to them?—A. No, sir; I do not.

Q. Did you have anything to do with the sending of Mr. Jamme to Alaska for the purpose of examining this harbor?—A. I never heard his name until this morning; and I never saw his report.

Mr. SHERIDAN. That is all.

Redirect examination by Mr. HUGHES:

Q. The Metropolitan Bank, which you spoke of, was organized and began business last February?—A. Yes, sir.

Q. To refresh your memory respecting the interview you say you had with Mr. Glavis, I will ask you if I can assist your memory by calling attention to the question whether or not Mr. Glavis, when he came in and was introduced to you, professed to you that he had been a schoolmate of your son, or a classmate.

Mr. SHERIDAN. I object to that question as incompetent, irrelevant, immaterial, and improper.

Mr. HUGHES. Answer the question.

A. I don't know whether—I know that either my sons have said so or he said so, that he was—they were together at Lawrenceville, N. J., at school.

Q. Do you recall anything about this conversation in connection with your conversation at that time?—A. No, sir.

Q. Upon that subject?—A. No, sir; I do not. I just got the impression that this affidavit was needed to facilitate securing the patents and I—

Q. How did you get that impression?—A. I got it from Mr. Glavis, and I got it from Mr. Cunningham.

And thereupon this inquiry was adjourned until 9.30 a. m., November 27.

NOVEMBER 27, 1909—9.30 A. M.

Appearances: Hon. William J. McGee, United States special commissioner; Mr. James M. Sheridan and Mr. William B. Pugh, counsel for the Government; Mr. E. C. Hughes and Mr. John P. Gray, counsel for the claimants.

Mr. HUGHES. We at this time desire to offer on behalf of the claimants the testimony heretofore taken of Dr. John G. Cunningham, a witness offered on behalf of the claimants, whose testimony was taken out of order on November 20, 1909. We desire to offer that testimony at this time and ask that it be inserted in the record at this place.

The testimony of Dr. John G. Cunningham, the witness referred to, being as follows, to wit:

Dr. JOHN G. CUNNINGHAM, a witness produced on behalf of and being one of the entrymen named in this proceeding, being first duly sworn by the commissioner, testified as follows:

Direct examination by Mr. GRAY:

Q. Will you state your name, residence, and occupation?—A. John G. Cunningham; residence, Spokane, Wash.; occupation, physician and surgeon.

Q. How long have you resided in Spokane, Doctor?—A. Between eleven and twelve years.

Q. You are one of the defendants in this proceeding and one of the claimants here, Doctor?—A. Yes, sir.

Q. You are the same John G. Cunningham who entered the Octopus claim, in the Kayak mining district, Alaska—this coal claim?—A. Yes, sir.

Q. I hand you, Doctor, a power of attorney, attached to which is an affidavit which has already been introduced in evidence, and ask you if you executed that power of attorney and that affidavit, sworn to before P. C. Shine, a notary public in and for the State of Washington, on the 28th of January, 1905?—A. Yes, sir.

Mr. GRAY. This power of attorney and affidavit have been introduced in evidence under the stipulation which has been made between counsel for the Government and counsel for the claimants, and is marked "Received and filed Oct. 10, 1905, John W. Dailey, receiver," and is included in the papers in connection with survey No. 42, John G. Cunningham.

Q. Doctor, when did you first become interested in this coal field in the Kayak district, Alaska, and state briefly under what circumstances?—A. In the spring of 1902, I heard of the oil lands in Alaska, and I had a friend that was very anxious to go up to inspect these fields, and I, with one other gentleman, a Mr. F. C. Davidson, put up the necessary expenses to send two prospectors up there. They returned, I think, in the latter part of June or July, 1902, with reports of having filed on a number of oil lands, and also brought reports that there was coal fields in the same region. One of the parties went back to Alaska, and remained there some time at our expense and came back with some samples of coal and oil. He wished to return again and at that time we induced Clarence Cunningham to return with him and inspect these lands they claimed to be in that region. We, together with this party, went, I believe, in August or September, or October, I think it was in 1903.

Mr. HUGHES. 1902, wasn't it?—A. 1902, and inspected the oil fields, I believe, and located some further oil lands or claims, rather, and went and inspected the coal claims which were claimed by squatters.

Q. When did he return, Doctor?—A. He returned several weeks later; I could not give the exact dates.

Q. What report did he bring to you, if any, concerning the coal?—A. He reported that they seemed very good looking coal claims there that were claimed by squatters, and that he had made arrangements to buy those squatters' rights. He did not think they had any legal right, but he thought it was the best policy to buy their rights and not have any difficulty with the squatters in that region.

Q. What arrangements, if any, did he tell you he had made with those squatters as to what kind of contracts he had taken from them?—A. To the best of my recollection, he was to give them about \$300 a claim.

Q. Taking options on the claims?—A. He took options on the claims for \$300 which were afterwards surveyed—

Mr. SHERIDAN. If you will allow me, Doctor, to suggest that Mr. Gray not suggest the nature of the transaction, but let the Doctor testify to that.

Mr. GRAY. It is merely formal, and not going into the transaction. Simply preliminary.

Mr. SHERIDAN. We would like to have that brought out.

Q. State whether or not he brought any coal samples back with him when he came.—A. I don't remember whether he brought samples on the first trip. I know that on one of the trips he brought back, I believe, ten sacks of coal which he had tested. I saw the coal and saw some of the analyses.

Q. Now, just state, as you recall it, what occurred after his return from that trip, and what, if anything, was done by you or Mr. Clarence Cunningham or any others at that time with reference to these coal lands.—A. Well, after, as I said, bringing these samples back, and testing them, and finding the values, etc., he returned to Alaska, and I think took up these options.

Q. Pardon me, but what did he or you or any other persons do upon his return from that first trip with reference to these coal lands?—A. Why, we put up some money—

Q. With reference to inspecting and investigating them?—A. Well, we put up some money and sent him back for exploratory purposes.

Q. Who put up the money?—A. I could not state all the different parties; I know I put up some, and Mr. Davidson, and ex-Governor Moore, and several others I could not be sure about or state.

Q. What understanding or agreement, if any, did you put up that money on at that time?—A. Why, I don't remember of any particular agreement any more than it was for the purpose—exploratory purposes—to find the value of these lands.

Q. And how about taking up the contracts?—A. He took up the options with these squatters.

Q. What, if anything, did you have to do with interesting any persons at that time in these coal lands?—A. I never had any part in interesting anybody particularly outside of Mr. Davidson and the party I mentioned to start with

Q. Who did that, if you know? Who did interest them?—A. Why, I think Clarence interested most of them—induced the most of them to become interested that did become interested.

Q. Did he make any reports to you as to whether or not he had investigated the question of whether or not these lands could be acquired under the law?—A. He talked with me at different times. I know that question was talked about, and, as I understood it, there were no laws covering coal lands in Alaska at that time, and there was some question as to how he was to take them up. I think it was his idea he could take them up under the mining laws, and I believe he pursued that course at first with that idea.

Q. Did you consult any attorneys yourself?—A. Personally; no.

Q. In connection with that matter?—A. No.

Q. Upon whom, if anyone, did you rely upon for attending to that business?—A. I left that matter entirely in the hands of Clarence. I had full confidence in his ability in that line, and I did not pay any particular attention to it.

Q. How much money did you put up at that time, Doctor?—A. I think it was \$500, to the best of my recollection; \$500 I put up for that second trip; I am not absolutely certain about these matters without looking them up.

Q. What agreement or understanding did you have with your brother Clarence at that time or with anyone else in connection with the matter?—A. I had no particular agreement at all.

Q. Did you have any understanding or agreement with reference to the matter at that time other than what you have already testified to?—A. Nothing outside of the original agreement when we sent him up there on the oil matter. I never had any further agreement.

Q. That had no reference to coal lands, did it?—A. No.

Q. When did you next see Mr. Clarence Cunningham? I mean, about when?—A. I can not state definitely. I used to see him generally on his return.

Q. Did you see him on his return from that second trip to Alaska?—A. I think I did.

Q. Can you state, Doctor, what report he made to you at that time? Well, first, did he bring back any coal on that second trip?—A. I think he brought back coal.

Q. Do you know how much?—A. I think he brought back 10 sacks. I think I testified to that.

Q. What, if anything, did he advise you as to having acquired any of these lands for you?—A. Well, he told me he had located a claim for me.

Q. Did he make any report to you as to what he had done with the money he had received in the way of taking up these contracts or options or buying off the squatters?—A. Yes; I think he reported that he took up the options from the squatters; and he took up some provisions with him at that time. I am referring to the second trip.

Q. What else, if anything, occurred at that time, if you know, that you can remember of or about?—A. I don't remember of anything further than I have already testified. I believe that I testified about testing the coal.

Q. Will you state as to whether or not—state what report he made as to the quantity of that coal land that he had found was available in the field, or that was there?—A. Well, I know he made reports there were vast quantities of coal there, but no further than that. There was no detailed report made—not to me, at least.

Q. Do you know whether or not at that time he interested any other persons in the coal lands in that district?—A. Well, from my definite knowledge, I do not. I think he located a number of different friends on different claims that he had. That part of it I never paid much attention to, as I did not [witness stopped].

Q. After Mr. Clarence Cunningham went up there on that second trip and purchased the squatters' rights, what had you to do with the management of the affairs concerning these coal lands? What did you do yourself after that, if anything?—A. Nothing; any more than to pay my drafts when he would make them on me.

Q. What drafts?—A. Well, he used to make drafts on me, sometimes from Seattle, when he would return. He would make them for some expense or something.

Q. What did you understand was done with the money?—A. I understood it was to pay expenses for the location of my coal claims, and there was some developments went on in oil work, too, and I suppose a portion might have been used on that, but I don't know.

Q. And did Mr. Clarence Cunningham tell you at any time as to what he was doing with that money in the way of prospecting or building trails or anything?—A. Yes; I understood he was prospecting the different claims, and that he was building trails and wagon roads and bunks—I should say bunk houses, places or quarters for men. I think he has to buy some scows or something to get his provisions in.

Q. When Mr. Clarence Cunningham returned from Alaska on or from that second trip did you make or have any agreement or understanding with him or anyone else concerning these claims?—A. No, sir; I never did.

Q. Or concerning your claim?—A. No, sir.

Q. Doctor, I now hand you the power of attorney and affidavit which I showed you before and which you have already identified, and ask you what was done at that, and what information you had from your brother, Clarence Cunningham, upon which you made that power of attorney and affidavit?—A. The information I had at that time was that there was some laws passed governing coal claims in Alaska which required the taking up of claims under the new law, and that all we had done prior to that time covering the claims was in no way applicable to the entry of these new claims.

Q. At the time you executed that power of attorney and made that affidavit had you had any agreement or understanding with your brother, Clarence Cunningham, or with any other person, by which any part of that claim was to inure to their or his benefit?—A. No, sir; I never did.

Q. Had you had any understanding or agreement, Doctor, at that time that you would develop that claim together with other claims adjoining you, or with other lands adjoining you, or with others who were interested in these coal lands in that district?—A. I never had any agreement with any other person further than has been stated.

Q. Did you have any agreement that you would use or hold that claim for the benefit of any others who were interested in that district, or for the use or benefit of your brother, or should share in it with other claims in any way?—A. No, sir; I never had.

Q. Did you have any agreement or understanding by which you had agreed or understood, directly or indirectly, that you would turn

your claim, or any part of it, over to any other person or a corporation or company to be organized thereafter?—A. No, sir.

Q. What was your purpose in securing that claim?—A. Why, just as a speculation. I heard that it was probably a good speculation and that I could go into a mining venture and clean up something. I just was talked into or went into it; I never paid any particular attention to it.

Q. What, if any, intention did you form prior to making this affidavit and executing that power of attorney, or subsequently thereto, as to what you would do with your claim or the developing of it, or the method of developing it, or how you would develop it?—

A. I did not understand the first part of your question.

Mr. GRAY. Read the question.

(Question read by the stenographer.)

A. I never gave that part any consideration.

Q. Did you know what, if any, compensation Clarence Cunningham was receiving for looking after this and adjoining claims?—

A. I knew he was getting a salary at that time. I did not know or pay any attention to what it was. I know he was drawing what he claimed was just a living salary. Later on I learned it was \$200 a month.

Q. You contributed your share toward that salary?—A. I contributed that share toward that salary; yes.

Q. Doctor, referring to your application for patent, signed by you and included in the papers sworn to before P. C. Shine on the 21st day of January, 1906, and included in the papers already in evidence by stipulation, is that it? [Paper handed to witness.]—A. Yes, sir.

Q. I will ask you if you, prior to executing that paper, had any understanding or agreement with your brother, Clarence Cunningham, or any other person, by which any part of the claim which you offered to apply for for patent should inure to his or their benefit at any time in the future?—A. I had no such agreement.

Q. Did you have any agreement by which you held that for the general use of the others who had located in that same district, or for the joint use of yourself and brother, or for the joint development of that claim together with other claims?—A. No, sir; I did not.

Q. Doctor, were you acquainted with these other entrymen who are defendants here at that time?—A. I am acquainted with some of them, but not all of them.

Q. Are you acquainted with all of them at this time?—A. No, sir.

Q. Do you recall the time when you paid the Government for this land?—A. Yes, sir.

Q. Did you, subsequent to the application for patent which I have just handed you, make an affidavit which was prepared by Special Agent Love and preceding final payment for the land? Have you that affidavit, Mr. Sheridan?

Mr. SHERIDAN. I think it is in there.

Mr. GRAY. No; I do not find it there.

Mr. SHERIDAN. It should be there. [Examines papers.] I will give you a sample of the others. [Paper to counsel.]

Mr. GRAY. I presume the Doctor would only recall it if he sees his own signature. I hand the witness an affidavit of Alfred Page, entitled "Applicant's affidavit as to use and benefit," and received and

filed in the Juneau (Alaska) land office April 11, 1907, from the packet of papers in the entry of Mr. Cunningham's claim, and let the record show that such a paper had been in the package, but it is not there at the present time; and it is agreed between counsel for the Government and for the claimants that Doctor Cunningham executed an affidavit identical with the affidavit of Mr. Page, and it is handed to him with that understanding.

Mr. SHERIDAN. We assume that is correct. However, we wish to state now that the absence of the paper was discovered when the original papers came from Juneau, Alaska, into our hands.

Mr. GRAY. But the list of papers inclosed show that there was such an affidavit filed in that office, in that land office.

Mr. SHERIDAN. I agree to that.

Q. Doctor, I hand you that affidavit, and will ask you if you at any time executed a similar affidavit? [Paper handed to witness.]—

A. Yes, sir.

Q. Did you make a similar affidavit, Doctor?—A. Yes, sir; I made a similar affidavit to that.

Q. At the time you made that affidavit, did you have any agreement or understanding of any kind or nature with Clarence Cunningham, or with any other claim holder in that district, or with any one, by which any part of that claim of yours should inure, in whole or in part, to the benefit of such other person or persons?—A. No, sir; I did not.

Q. Did you have any agreement by which you were to turn it over to a corporation or company to be thereafter formed?—A. No, sir; I did not.

Q. Did you have any agreement by which you were to combine it with any other claims for working or for any other party?—A. No, sir.

Q. Did you have any agreement respecting the claim at all?—A. No, sir; I had no further agreement than stated already.

Q. Doctor, you recall the time when you paid the Government for the land?—A. Yes, sir; I did.

Q. How did you forward that money, or to whom?—A. I paid it to the land office in Juneau, Alaska.

Q. And you received certificate and receipt to show payment thereof?—A. Yes, sir.

Q. At the time you received that receipt, had you any understanding or agreement with Clarence Cunningham, or with any other entry holder of any claim in that district or elsewhere, or with any one, by which the title to that claim should inure, in whole or in part, to their or its benefit?—A. No, sir; I had no agreement.

Q. Or any agreement by which or that you were to turn it over to a company or corporation to be thereafter formed?—A. No, sir.

Q. Or which had been already formed?—A. No, sir.

Q. At the time you received that receipt, had you ever had any agreement by which you jointly would operate or develop or work that claim as a mining claim, or otherwise, as a mine, with any other claimants or claimant, in that district, or with any one?—A. No, sir.

Q. Did you ever make, prior to receiving that receipt, any agreement whatever with reference to that coal claim, under or by the terms of which you had agreed to turn the whole or any part thereof over to any other person or persons, association or corporation, or

to combine it with any other lands whatever for the purpose of developing or working or exploration?—A. No, sir; I positively did not.

Q. Doctor, had you made any agreement at the time you received that receipt, by which, after receiving, or at any time in the future, you would combine your claim with any other lands for working them together as a mine?—A. No, sir.

Q. Or for the benefit of the several owners of the lands?—A. No, sir.

And thereupon, a recess was taken to 2 p. m., November 20, 1909.

NOVEMBER 20, 1909, 2 P. M.

INQUIRY RESUMED.

Appearances: Hon. William J. McGee, United States special commissioner; Mr. James M. Sheridan and Mr. William B. Pugh, counsel for the Government; Mr. E. C. Hughes and Mr. John P. Gray, counsel for claimants.

Dr. J. G. CUNNINGHAM on the stand.

Direct examination resumed by Mr. GRAY:

Q. State what the facts are as to your having knowledge concerning your brother's representing others, if at all, who had locations or coal land adjoining—first, for the purpose of making locations of coal land adjoining the claim which was located by you or in that locality?—A. I understood he was representing others than myself in the location of property there.

Q. Where did you get that information?—A. Well, I suppose from general knowledge and conversation. I can't state exactly where I got it, but it was my impression he was there representing others—in fact, I knew he was representing some others.

Q. State whether or not you knew that he was receiving money from others for making locations for them and for making the necessary applications to determine whether or not the coal fields were of sufficient value to justify purchasing them from the United States.—A. Yes, sir; I knew he was receiving money from others.

Q. Where did you get that information, Doctor?—A. Well, I knew some of the others that claimed that they had sent him money for that purpose, the same as myself, and also from himself in different conversations. I knew they sent him money.

Q. Did you know just how that work was done, or just how the money was expended by Mr. Clarence Cunningham?—A. No; I can't say that I did. I suppose it was—

Q. Do you know for what purpose it was expended?—A. Well, I suppose it was spent for exploring the region in general.

Mr. SHERIDAN. Well, now, we object to any supposition. We want the witness's actual knowledge, if he has any.

Mr. GRAY. Well, he can give his knowledge, and also show upon what he bases it.

Mr. SHERIDAN. He said he supposed. He didn't say he knew.

Q. Well, just as you recall it, Doctor?—A. Well, that is the only way I could answer it—was that I suppose it was. I was not up

there, and could not absolutely swear what he did with the money, is all.

Q. From the knowledge you did receive or the information you received (interrupted)?

Mr. SHERIDAN. We object to that question.

Mr. HUGHES. Let the question be asked first and always before objection is made, Mr. Commissioner. We have a right to our question in full.

Mr. SHERIDAN. I have a right to object as soon as the question becomes objectionable.

Mr. GRAY. Oh, no; you have not.

Mr. HUGHES. If counsel will consult his authorities on that subject, he will find he has the right to object, but only when the question is completed and before answer is made.

Mr. SHERIDAN. That is true at times.

Q. Doctor, from the information you had just state whether or not you knew this money was being expended in general prospecting work upon the field for the purpose of ascertaining whether or not the field was faulted or whether or not the coal veins, if any, existing were faulty or were of sufficient value to justify purchase from the United States?

Mr. SHERIDAN. I want to enter the objection to this question as being testimony from Mr. Gray and not by the witness, and as being leading and highly improper under the rules of evidence.

Mr. GRAY. After the examination that I permitted counsel to make this morning of his own witness, I am surprised that he should make an objection to leading questions.

Mr. SHERIDAN. If you did not see fit to object to them that is your loss.

Mr. GRAY. Answer the question, Doctor.—A. I was satisfied that the money was expended for that purpose.

Q. Upon what and from what source did you acquire this information?—A. Well, from conversations with my brother and others, who had been up there to see the property.

Mr. GRAY. That is all. You may take the witness for cross-examination.

Cross-examination by Mr. SHERIDAN:

Mr. SHERIDAN. Now for the purpose of expediting matters, I wish to make a statement concerning the cross-examination of witnesses called on the witness stand by the claimants in this case. Of course, under the rules of practice and under the rules of evidence as followed in the Department of the Interior and the General Land Office, as has been stated by the special commissioner, all objections made may be made and entered on the record. However, I wish to have one understanding concerning the objections from opposing counsel, and that is that any objections made for the purpose of causing me to deviate from the cross-examination which I propose to follow will be futile.

Mr. HUGHES. Will be what?

Mr. SHERIDAN. Will be futile. I shall not deviate from the course of cross-examination I have made up my mind to follow. Of course, objections made for the purpose of objecting to the testimony on the

grounds of irrelevancy, immateriality, and competency will go on the record under the rule, but I wish to have that understood before I start.

Mr. HUGHES. I do not suppose that any such explanation is necessary, in the light of what the commissioner has announced.

The COMMISSIONER. I did not catch fully the import of Mr. Sheridan's statement.

Mr. SHERIDAN. It has been my experience in handling investigations of this sort that counsel sometimes get the idea that opposing counsel may be dissuaded from proceeding along lines he proposes to develop by forcible objections, and I wish to announce the futility of any efforts of that sort at the start.

Mr. HUGHES. It is quite unnecessary to make such an announcement to us. We will endeavor to represent our clients in accordance with the rules of evidence and to represent them fully according to their interests.

Mr. SHERIDAN. How old are you, Doctor Cunningham?—A. Thirty-eight years old.

Q. You are one of the entrymen in this inquiry, concerned in this inquiry?—A. Yes, sir.

Q. You retain your interest at the present time?—A. Yes, sir.

Q. Are you acquainted with one of the entrymen, Mr. Andrew L. Scofield, who is one of the entrymen in this inquiry?—A. No, sir; I think not.

Q. Are you sure of that?—A. I do not recollect ever having met him.

Q. Have you, at any time, been acquainted with Francis Jenkins, one of the entrymen in this inquiry?—A. Yes, sir.

Q. When did you first meet him?—A. I could not state positively, but to the best of my recollection he used to live at Wallace, Idaho, and came to Spokane occasionally with Clarence and other people from that Coeur d'Alene district. I have been up there a good many times and met a good many of those people.

Q. Did you meet them prior to becoming interested in the Alaskan coal and oil fields?—A. I can not say positively; I think it was about that time. I would not be positive.

Q. What does Mr. Jenkins do, if you know?—A. Why, I am not certain as to that. I think he is a mining man.

Q. Do you know where he lives at the present time?—A. I think he is at Moscow.

Q. Idaho?—A. Idaho, I believe; at Moscow.

Q. Subsequently to becoming interested in the Alaskan fields, did you at any time meet Mr. Jenkins?—A. I am not positive as to that; I do not remember.

Q. Why not?—A. Because I don't remember of meeting him.

Q. Because you don't remember of meeting him?—A. I don't remember my first meeting with Mr. Jenkins.

Q. Do you remember any other meetings with him?—A. Yes, sir.

Q. Enumerate them and state where they were and the nature of the circumstances you met him.—A. Why, I met him at the Spokane Hotel, in Spokane.

Q. When?—A. I can not give days or dates. At different periods in the last several years.

Q. Can you give the last meeting?—A. No; I could not say any particular meeting.

Q. Describe the circumstances of the meeting.—A. Well, I think that I just met him with Clarence there as one of the friends from Wallace.

Q. Did you ever have any conversation with him at that time about anything?—A. I can not recollect any.

Q. Did you have any conversation with your brother, Clarence Cunningham, while in the presence of Mr. Jenkins at that time?—A. I don't remember anything.

Q. Did you ever meet him again?—A. Yes; I met him the other day.

Q. Where?—A. In a case; in a mining case and suit in Spokane.

Q. Did you have any conversation with him on this latter occasion?

Mr. GRAY. I object, unless they are confined to some matters connected with this inquiry.

A. I had no conversation with reference to this matter. I had a conversation with reference to other matters.

Q. You had no conversation whatever with him, then, on either of these occasions that you refer to concerning the group of entries now under investigation?—A. Not that I remember of.

Q. Do you remember ever having had any conversation with him about this group of entries?—A. No, sir; I do not.

Q. Are you acquainted with Charles J. Smith, one of the entrymen in this group?—A. Yes, sir.

Q. When did you first become acquainted with him?—A. I think about a year ago.

Q. Under what circumstances?

Mr. GRAY. I object, as entirely immaterial, as being—the meeting having occurred long after all matters which are being inquired into here had transpired; and it is not proper cross-examination.

Mr. SHERIDAN. Read the question.

(Question read.)

A. If I remember correctly, he was with Clarence Cunningham and, I believe, Mr. Finch and several others. I think I met him on the street and was introduced to him.

Q. Did you at the time of the meeting with Mr. Smith, as just described by you, have any conversation whatever with him concerning this group of entries?

Mr. GRAY. I object to that as improper cross-examination and as immaterial and irrelevant to this inquiry.

Mr. SHERIDAN. Answer the question.

A. I think he was one of a party of several that had a general conversation about this—I don't know just—it was more with reference to getting the patents than it was to a particular entry.

Q. Who were those who were present?—A. Well, Clarence Cunningham was one, and I think Mr. Finch, of Spokane, and I believe Mr. Wick.

Q. Mr. Hugh B. Wick?—A. He and others; I think so, yes; I would not be positive. I know it was some time, but what his initials were I don't know.

Q. Where did this meeting occur?

Mr. GRAY. Our objection, Mr. Sheridan, goes to all such so-called cross-examination as this.

Mr. SHERIDAN. Very well.

A. Why, I can not recall definitely. I know that it was either on the street or afterwards, I think, we went to Judge Ballinger's office.

Q. Judge Ballinger's office? Now, what meeting was this?—A. It was one or two years ago. I could not recall.

Q. Was it 1907?—A. I can not state positively. I know it was—

Q. What did you go to Judge Ballinger's office for?

Mr. GRAY. I object as immaterial, irrelevant, and improper cross-examination. If you want to call him as your own witness, you may do so.

Mr. SHERIDAN. Well, we will argue that point afterwards, Mr. Gray. I do not care to argue it now. Answer the question.

A. Well, I went with them, and they had some consultation with Judge Ballinger.

Q. About what?—A. About coal patents, I believe, or entries.

Q. Give us in detail what conversation occurred, as far as you can recall it.—A. I can not recall very much of the conversation. I was only there a few minutes. I went more on the invitation of my brother to meet them, I took no part in the conversation, and I do not recall very much about it.

Q. Well, how much do you recall?—A. Well, that I can not state anything particular that I do recall.

Q. Your memory is very poor on that?—A. Quite poor.

Mr. GRAY. I object to the form of that question as improper entirely under all the rules of evidence.

Mr. SHERIDAN. I wish to call the attention of counsel for claimants to the fact that investigations of this kind are peculiar and different from the ordinary court inquiries, for the reason that the authority who passes upon the testimony introduced is not present, and the conduct of the witness is a matter to be put of record when it has any significant bearing in this case.

Mr. HUGHES. We wish at this time, and without intending to be sarcastic, to suggest that we think that we understand the nature of this inquiry, and the tribunal which passes upon it, and the power and authority of that tribunal, without any advice or information from opposing counsel; and we earnestly and emphatically protest against the suggestion implied in the statement of counsel that the conduct or demeanor of this witness is other than that which comports with honesty, integrity, and dignity and self-poise. Our only regret is that the tribunal which passes upon this testimony can not see and hear the witness.

Mr. SHERIDAN. That is also my regret, because the lapse of memory of this witness is very remarkable—

Mr. GRAY (interrupting). I resent that—

Mr. HUGHES (interrupting). We want to enter our protest against the undignified, improper, and unprofessional conduct of this interrogator.

The WITNESS (interrupting). I would like to explain—

Mr. HUGHES (interrupting). Now, this commissioner has indicated in the beginning that comments would be unnecessary, provoked by opposing counsel in this case. We will do nothing but make our objections if counsel will refrain from argument or com-

ments; but we can not be intimidated into any disregard of the rights of our clients by counsel representing the Government.

Mr. SHERIDAN. Well, now, I will state, for the information of Mr. Hughes that it is not my purpose to enter into any argument; but since he volunteered the comment on the perfect behavior of the witness on the stand, and since that was Mr. Hughes's opinion of him, why, I think I have the right to similarly volunteer my opinion; and in reply to any statement as made by opposing counsel concerning the conduct of any of their witnesses produced, as to demeanor or otherwise, I shall meet it with my opinion.

Mr. HUGHES. Mr. Commissioner, I made no remark until after counsel had made an improper remark endeavoring to put his photograph of this witness in the record. I shall do in this case, and I speak for my associate counsel also, nothing in the course of this trial which is not provoked first by opposing counsel. We will make no arguments and no remarks, except to propound our questions and note our objections, unless counsel first volunteers to go beyond the scope defined by the commissioner.

Mr. SHERIDAN. I have nothing further to say now.

The WITNESS. I would like to have the opportunity of making a statement that is in explanation of my poor memory. The matter is simply this, that I had absolute and ample confidence in the honesty and integrity of my brother, who was representing me in this work, and I have paid very little attention to the details of the progress of the doing of the whole transaction. I met these gentlemen in a formal way, and I never took any part in any conversations and doings, and consequently it made no particular impression upon me, and perhaps my memory is not as good as it might be in the same connection.

Q. Was this the only meeting that you had with Mr. Smith concerning these entries?

Mr. GRAY. I make the same objection.

A. I do not recall whether I ever met Mr. Smith concerning these entries in reference to that again.

Q. Again?—A. I have never met Mr. Smith over two or three times in my life, and I never was over a few moments in his presence.

Q. Did you ever meet Mr. Horace C. Henry?—A. Yes, sir.

Q. Did you meet him at any time since you became interested in Alaska, and was such meeting in reference to the entries now under investigation?—A. The first time I met Mr. Henry was in reference to some railroad work. He was contractor for the Milwaukee, for a large amount of work for the Milwaukee, and I called on him with reference to endeavoring to get some of that surgery work for the contractor.

Q. My question is, Did you ever meet him in connection with the entries now under investigation?—A. I might have been present at a meeting at which I met Mr. Smith, but I can not recall it.

Q. Then, according to the best of your recollection, you do not recall ever meeting Mr. Henry, one of the entrymen in this group, at any time in connection with these entries or the consideration of these entries?—A. I can not answer it in any other way. I met him several times, but I do not remember that I ever met him in connection with this outside. Whether he was present or not I am not sure.

Q. Are you acquainted with Ignatius Mullen, one of the entrymen in this group?—A. No, sir; I believe not.

Q. Are you acquainted with Henry White, who was also one of the entrymen?—A. Yes, sir.

Q. When did you first meet him? And state whether or not that meeting, or any other meetings you ever had with him, were in connection with these entries or in connection with any of them.

Mr. GRAY. We object to the form of the question and also to the question, upon the ground that it is improper cross-examination.

A. I met him in connection with these entries, I believe, the same as I had met the other gentleman mentioned. I have one distinct recollection of meeting him, and since his recent return after he went up on the *Ohio*. That was since his return. I met him and talked with him about the shipwreck.

Mr. HUGHES. Speak a little louder, please.

A. I say, since his return from the intended trip to Alaska on the *Ohio*, after he came back to Spokane, I met him and talked with him in general about the shipwreck, and also the prospect of his getting our patents.

Q. Was that during the present year?—A. Yes; during the present year.

Q. About what month?—A. Well, that is a matter of about one or two months ago. Perhaps two months ago.

Q. Give us, briefly, as near as you can, what conversation you had with him concerning the patent to these entries?

Mr. GRAY. I object to that as absolutely immaterial, irrelevant, and not proper cross-examination.

A. Why, there was very little, if any, conversation with reference to patents. More conversation with reference to newspaper articles.

Q. Could you recall any of the points made?—A. I can with reference to the newspaper talk, but not with reference to this.

Q. What was it?

Mr. GRAY. I object to that.

A. Well, the particular conversation was with reference to articles which were appearing in the *Spokesman Review* and in reference to answering these articles.

Q. Did you ever at any time prior to or subsequent to this meeting referred to by you have any other meeting with Mr. White at which you discussed or considered the entries now under investigation?

Mr. GRAY. I make the same objection.

A. I can not recall particularly.

Q. Are you acquainted with Henry W. Collins, one of the entrymen in this inquiry?—A. Yes, sir.

Q. How long have you known him?—A. About nine years.

Q. Did you ever have any conversation with him concerning these entries?—A. I think so.

Q. When and where?—A. Well, I can not state positively as to that. I have had general conversations with any personal friends I had interested with me in the same.

Mr. GRAY. Understand, Mr. Sheridan, my objection goes to all of this line of examination, without repeating it, as improper in my judgment. I desire to object to all of it.

Mr. SHERIDAN. That is my understanding, but whether it is improper remains to be determined.

Mr. HUGHES. The only thing I want to know is that the record shows that the objections are continued throughout without our encumbering the record with a repetition of them, if that may be the understanding?

Mr. SHERIDAN. Yes.

Mr. GRAY. As far as it may go to the line of examination where the questions are of the same character to this objected to; any different questions asked we will make our specific objection to them.

Mr. SHERIDAN. Yes. I want you to confine your answer to Mr. White; I want to know if you had any conversations with him at any time concerning these entries, and give the substance of the conversations.

Mr. GRAY. Mr. Collins, you spoke of?

Mr. SHERIDAN. Yes, Mr. Collins. Just make that Mr. Collins.

A. Well, I knew Mr. Collins was interested in the claims up there the same as myself.

Q. How did you know that?—A. Well, through my conversations with him, and also my brother knew he was one of the entrymen in that field.

Q. How long ago was it you learned of that fact?—A. Well, I think he was one of the early entrymen. I knew Mr. Collins long before that, and I frequently have seen him, every time he came to Spokane, and I have been hunting with him and we have been very good personal friends.

Q. How far back could you remember having had a conversation with him—about what year—concerning these entries?—A. I can not recall any definite conversations. I know I have talked with him about them, but any particular definite conversation I can not recall.

Q. Do you remember a conversation with him concerning this matter as early as 1902?—A. No, sir; I do not.

Q. Do you remember a conversation with him in 1903?—A. No, sir; I can not recall any definite time.

Q. What year? You can not fix a year?—A. I can not; no.

Q. But you do recall having had conversations with him concerning it?—A. Yes, sir.

Q. Are you acquainted with Fred C. Davidson, one of the entrymen in this group?—A. Yes, sir.

Q. How long have you known him?—A. About ten years.

Q. Have you at any time, since you became interested in the Alaskan field, had any conversations with him concerning these entries?—A. Yes, sir.

Q. Give, as near as you can, the time and the place and the substance of that conversation.—A. Well, Mr. Davidson was one of the original entrymen who, together with myself, put up money for Clarence's first expenses to Alaska. The only part of a definite conversation I can recall is we frequently met, and he would say, "I got a draft from Clarence," or, "Clarence made a draft on me for money," and I would compare notes with him with reference to that, and he did also.

Q. Do you recall any of these drafts? How much they were for, or when you had your attention called to them?—A. Oh, they were frequently for all the way from \$100 to \$500.

Q. Can you recall the year or the month on which any of them were drawn?—A. Why, not definitely. I think every year since we first started to spend any money there.

Q. Is this all you recall of your dealings with Mr. Davidson concerning this group of entries?—A. Why, I can recall different conversations as to the question of the value of the claims, and the question of the quality of the coal and the improvement of—some day they might be valuable.

Q. That is as near as you can recall?—A. Well, that is the general substance of about the conversation; yes.

Q. Can you give them in any greater detail than you have given them?—A. No; I think not pertaining to that.

Q. When did you last see Mr. Davidson concerning his entry?—A. Well, I can not say that I have seen him concerning those at any particular time. I have frequently met him. I have met him almost every day, but concerning them, I can not say I have met him particularly with regard to that.

Q. When did you last meet and converse with him concerning these entries?—A. Why, the last time I met him was, I think, day before yesterday, when I left Spokane and came over here, and I conversed with him about the probability of whether I could be here so I could get away in time to make my connections East.

Q. Was that the only thing in this matter that you discussed with him at that time?—A. That is practically all.

Q. Do you recall anything else?—A. No, sir; I do not.

Q. Are you acquainted with Michael Doneen, one of the entrymen in this group?—A. Yes, sir.

Q. How long have you known him?—A. I have known him about the same time I have known Mr. Davidson, or shortly afterwards.

Q. When did you first ever, if at all, meet Mr. Doneen, and ever have any conversation with him concerning these entries?—A. Why, I think about the time that Clarence first went to Alaska.

Q. About 1902?—A. I think so. No, I believe about 1903. I don't remember whether I saw him in 1902 or not. I did not know him very well at that time; I knew him more through Mr. Davidson.

Q. Did you ever have any conversation with him concerning these entries?—A. Yes, sir.

Q. What was the substance of that conversation?—A. Why, it was very much the same as the conversation with Mr. Davidson, that—when was Clarence going to come back, or when have you heard from him. Conversations of that character. Never had anything very definite to talk about with them.

Q. Did you at any time meet Mr. Doneen and have conversations with him concerning these entries in the presence of any other of the entrymen?—A. I believe so; yes.

Q. Where and when?—A. Why, if I remember right, about a year or two years ago; meeting him at Mr. Finch and Campbell's office in Spokane.

Q. Were there any other of the entrymen present?—A. Yes, sir.

Q. Who were they?—A. Why, I remember Mr. Finch was present and I believe Mr. Burbidge; and I think Mr. Moore.

Q. Miles C. Moore?—A. No; I think his nephew, Mr. F. Cushing Moore.

Q. Any others?—A. I think there were other persons present, but I can not recall. I can not state positively whether Mr. Moore was present or not.

Q. Do you recall if any of those persons present on that occasion were entrymen in this group?—A. I think they were.

Q. Can you recall roughly about what number altogether were present at that time?—A. I think there were seven or eight.

Q. What was the purpose of that meeting?

Mr. HUGHES. That is objected to as calling for the conclusion and opinion of the witness as well as upon the other grounds as before urged.

Q. Answer the question.—A. Why, I think that meeting was called, if I recollect right—I was telephoned to and asked to come down to discuss something with reference to the property. Clarence was absent, I know. I think it was probably on account of his absence, perhaps, that I attended the meeting, or I think somebody had a proposition to make in reference to a sale or a purchaser for the property.

Q. Who called you by telephone?—A. I could not say whether it was Mr.—I think some of the clerks for Mr. Finch.

Q. The call came from Mr. Finch's office?—A. I believe so, to the best of my recollection.

Q. What do you recall concerning the proposition made at that time, or talked of at that time concerning the sale of the property?—

A. Why, there was a party by the name of Hayes—Jerry Hayes.

Q. Jerry Hayes?—A. Yes. He wanted to make an offer for the coal property.

Q. Did he make it?—A. He said he was authorized by somebody to make an offer for the property, and if it was, whether he made it or not I can not say.

Q. Do you recall by whom he was authorized to make this offer?—A. No; I do not. I believe he told who it was, but I do not recall.

Q. Where does Jerry Hayes live?—A. In Wallace.

Q. Idaho?—A. Wallace, Idaho; yes.

Q. How long did this meeting last?—A. Just a few minutes.

Q. Were there any notes kept of it?—A. Not that I know of. It was an informal meeting. I know that it lasted a very few minutes. Some one said we are in no position to consider any offers for something we do not yet own, and that ended it.

Q. You are quite certain you can not recall upon behalf of whom this offer was made?—A. Yes. I can not say that I even—I won't say positively that he stated who it was, but, however, it was somebody unknown and unheard of to me in the matter, and I do not remember.

Q. Is this the only meeting of this sort you attended concerning this property?—A. With reference to somebody purchasing the property?

Q. With reference to anything concerning the property?—A. I recall attending a meeting where there was some talk about something in the same line. I think it was about the same time, or near the same time.

Q. Well, where was it?—A. In the same place, in Mr. Finch's office.

Q. What was the purpose of this other meeting to which you refer?—A. Well, it was something similar, in raising money to—I think some one had made a similar offer, or something to help provide funds to develop the coal.

Q. Who had made the offer on this second occasion?—A. Why, I can not state who made it. I think the offer came through, I think, Clarence Cunningham, I believe. It either came through him, or Finch and Campbell, or some of them. I know there was some proposition [witness did not complete answer].

Q. This was in Mr. Finch's office also?—A. Yes, sir.

Q. About how many years ago was this second meeting?—A. It was about two years ago, I think.

Q. Who else were present?—A. Why, I think ex-Governor Moore, Mr. Finch, and Mr. Campbell, and Mr. Clarence Cunningham, and, I believe, Mr. Doneen and Mr. Davidson, to the best of my recollection. That is all I can recall.

Q. Were there any others present, whose names you do not now recall?—A. There may have been; I can not state.

Q. Were all those present entrymen in this group?—A. I believe so.

Q. What was done concerning this second offer at this meeting?—A. Why, I do not recollect. I think I was called away from the meeting, and did not stay to the final.

Q. Was anything definitely done about the offer while you were present?—A. I believe not, to my recollection.

Q. Was there anything done after you departed, of which you were subsequently advised?—A. Well, that I can not state positively.

Q. Why?—A. Because, as I stated before, I paid very little attention to the details of the matter, and the general conversation about different things, and the long time elapsing, and I have had a great many other things to look after, and I never gave any particular attention to it.

Q. Do you recall the name of the party making the offer on this occasion?—A. No, sir. I think it came from Clarence. Who it was, I can not state positively at all.

Q. When you say Clarence, you mean Clarence Cunningham, your brother, who was agent for the entrymen in connection with this group?—A. Yes. One thing other in addition I can say: I think that they went to Salt Lake City to see whoever the party was, but what the party's name was—I think it was Russell, or something like that. I can not give any definite name.

Q. You say that Clarence Cunningham went to Salt Lake for the purpose of attending to this offer?—A. I think that Clarence Cunningham and ex-Governor Moore and somebody else went to Salt Lake to consult with somebody who wanted—who had wired, or otherwise wanted to talk with them about the property—make an offer for the property.

Q. Yes.—A. Anything definite I can not state.

Q. Were there any other meetings than those two that you were present at concerning these entries?—A. I can not recall any definite meeting than the ones I have mentioned.

Q. Are you acquainted with Frank F. Johnson, one of the entrymen in this group?—A. I do not think I am. I do not think I am. I can not place him.

Q. Clarence Cunningham, your brother, has been and is the agent for the entrymen now being inquired into about this Alaska property, at all times, hasn't he?—A. I believe so.

Mr. GRAY. I desire to object to that upon the further ground that it is not the best evidence as well as improper cross-examination.

Q. Do you know of any other man at any time ever having been the agent for the entrymen, or any of them, in connection with these entries?—A. No, sir; I do not.

Q. Now, Doctor, what conversation, if any, have you had with your brother, Clarence Cunningham, concerning these entries? And in answering these questions, please give us, as near as you can, the time and the place when the conversation occurred. To assist you in arriving at the matter more promptly, when did you first have any conversation with your brother concerning Alaska?—A. It was back in 1902, shortly after I had, as I said, put up money to send some prospectors to Alaska. After I had done so, I know that I had talked with Clarence Cunningham with reference to it, and told him what I had done and conversed with him with reference to that.

Q. Did you subscribe any money in 1902 for any work to be carried on by Clarence Cunningham in Alaska?—A. I subscribed money to him, yes; I know I subscribed money in 1902; and I think it was for, as I stated before, for patenting operations and the general examination of coal lands, and also oil fields in Alaska.

Q. Did you make remittances to Clarence Cunningham for the purposes of investigation or investment in Alaska regularly from then on down to date, say, about yearly?—A. Yes; I made—I can not say regularly, but irregularly, every year—I made frequent remittances.

Q. More than one a year?—A. I think so. I think it would average more than that, considerably.

Q. Yes; can you recall the greatest number of remittances that you made for this purpose in any one year?—A. No; I can not.

Q. Now, did you ever have any conversations that you recall subsequent to Clarence Cunningham's departure for Alaska, for the purpose of prospecting the field, concerning these properties, and what was to be done with them?

Mr. HUGHES. May I ask, do you intend to direct this to any person? This question calls simply for conversations indefinitely with anyone, whether concerned in this matter or not. The question is indefinite in general. If that is the purpose of it, it is subject to another objection.

Mr. SHERIDAN. Please read the question.

(Question read.)

Mr. HUGHES. You do not ask with whom.

Mr. SHERIDAN. I mean with Clarence Cunningham.—A. Yes; I have had conversations with him.

Q. How soon after his return from his first trip to Alaska did you have any conversations in which you took up and considered the Alaska coal entries now under investigation?—A. Why, I think immediately after.

Q. What was the substance of the conversation when he came back?—A. Well, there was a number of very good coal claims there, and he brought back samples; and he showed me the samples and told me about tests and analyses and other things he had done with ref-

erence to the quality and value of the coal, and about the advisability of returning for further investigation.

Q. Did you discuss with him at this time the question of the development of your entry?—A. Not that I can specifically remember. I remember of his telling me about it.

Mr. GRAY. To what time do you refer?

Mr. SHERIDAN. To Mr. Cunningham's return from Alaska after his first trip.

Mr. GRAY. Objected to; no foundation laid for the question; for the further reason there is no evidence that there was an entry at that time upon his return from the first trip.

Q. Answer the question.—A. Why, he spoke about the advisability of returning to Alaska, saying if he did that he must take up provisions and men and horses and build roads and put up buildings.

Q. What for?—A. For the men to live in that he was going to put on these coal claims.

Q. How many men did he propose to put on these coal claims?—A. I can not tell you. That was in his discretion.

Q. Did he describe anything about the extent of the supplies or material which he would have to take up there at that time?—A. I think he told me he took up 25 tons.

Q. Of what?—A. Well, just provisions. I don't know what. Canned goods, meat, bacon—[witness stopped].

Q. Was this all for the purpose of developing your entry?—A. Not my entry alone.

Q. What other entries?—A. Of the other gentlemen he was representing, as well as myself.

Q. At that time?—A. Yes.

Q. About how many was he representing at that time?—A. Why, I can not recall. I know there were a number, but I never—[witness stopped].

Q. Were there twenty?—A. I can't say that. To the best of my recollection, he told me there was 22 claims, and I suppose from that there would be 22 representations.

Q. Do you recall any more of the conversation held at that time concerning this matter?—A. Well, he told me about the snow and the rain and the weather up there and the hardships of the country and the difficulty of getting in supplies; told about the wind.

Q. Did he say anything about how he proposed to develop this property?—A. Why, he said he would have to do development work on each claim. He would have to test out the value of each claim and do work on each claim, as I understood it.

Q. Did he go into any details as to what mode he intended to pursue in placing coal on the market?—A. No, sir.

Q. Did he go into any details about cooperating with his other friends and having them cooperate with him for the purpose of developing these entries jointly?—A. No, sir; not to me; he did not.

Q. He did not mention anything of that sort to you?—A. No, sir. Do I understand that question correctly? I would like—

Mr. SHERIDAN. Read it.

(Record read by the stenographer.)

Q. Did you, at any time subsequent to this last conversation referred to, have any further conversation with Clarence Cunningham concerning these entries?—A. Why, I have had similar conversations often ever since.

Q. When was the next one after that just enumerated by you?—A. I can not recall the specific conversation.

Q. You can not recall the time or place?—A. No, sir.

Q. Can you recall the substance of the conversation?—A. No; the substance has already been gone over. That has been about the substance of practically all the conversations, I believe.

Q. So that at none of these conversations was the subject of combining and jointly developing these entries, as far as you know?—A. No, sir.

Q. Did you ever sign any papers concerning the joint development of these entries now under consideration?—A. No, sir; I did not.

Q. Did you ever authorize anybody else to sign such a paper for you?—A. No, sir; I did not.

Q. Were you ever a party to any offer to dispose of this property to persons other than the entrymen?

Mr. GRAY. I object to the form of the question; and, further, I object to the question upon the ground that it should be confined to a time prior to the payment—to the location—and should be definite as to the time when the information—as to which the information is sought.

Mr. SHERIDAN. Read the question.

(Question read by the stenographer.)

The COMMISSIONER. Answer the question.

Mr. GRAY. I further object to the form of the question as containing an inference which is not justified by any testimony which the witness has given.

Mr. SHERIDAN. Now, please read the question again so that the doctor may get it.

(Question read by the stenographer.)

A. As I stated in answer to previous questions, I was present when there was an offer made in, I think, it was 1907 or 1908, and I stated about meetings which were held about the same time and in the same year. Other than those stated, I never was.

Q. Are you acquainted with A. B. Campbell, one of the entrymen in this group?—A. Yes, sir.

Q. How long have you known him?—A. Six or seven years.

Q. Have you ever had any conversation or dealings with him concerning these entries?—A. No, sir; not other than the few I was at—a couple of meetings.

Q. At the two meetings already indicated by you?—A. Yes, sir.

Q. That was the only time that you had any conversation or dealings with him concerning these entries?—A. That is just the general conversations with him personally; I can not recall any personal conversations with him regarding it.

Q. Are you acquainted with Henry Wick, one of the entrymen in this group?—A. Yes; I have met him, I think, once here in Seattle.

Q. How long ago?—A. I believe it was last year.

Q. At the time you met him did you have any conversation or negotiation with him concerning these entries?—A. No, sir; I did not.

Q. Did you at any other time?—A. No, sir; I never had a personal conversation with him.

Q. Are you acquainted with Hugh B. Wick?—A. Well, I am only acquainted with one Wick. I can't say whether it is Henry or Hugh

B., or who it is. The only Mr. Wick I met here, but which one it is I won't say.

Q. How old a man is he?—A. Oh, I should judge that he was in the neighborhood of 50 years—a rather tall man with dark whiskers—maybe more.

Q. Do you know what his business is?—A. I understood he was a coal and steel man, back, I believe, in Pittsburg, or Youngstown, Ohio, or somewhere there.

Q. Did you ever have any conversations or any negotiations with him concerning these entries?—A. No, sir.

Q. None whatever?—A. No, sir; I never had a personal conversation with him in my life.

Q. Do you know any other Mr. Wick who was also another entryman in this group?—A. No, sir; that is the only one I know.

Q. But you are not certain whether it was Hugh B. or Henry Wick?—A. No, sir.

Q. Do you know Fred H. Mason, one of the entrymen in this group?—A. Yes, sir.

Q. How long have you known him?—A. Knew him casually, oh, ever since I have been in Spokane, a matter of ten or eleven years.

Q. Have you ever had any conversations or negotiations with him concerning these entries?—A. Personally, no, sir.

Q. Did you ever, by correspondence or through an agent?—A. No, sir; not outside of whatever agent Mr. Clarence Cunningham might have been of mine.

Q. Have you ever negotiated with Mr. Mason through your brother, Clarence Cunningham?—A. No, sir.

Q. Do you know William E. Miller, one of the entrymen of this group?—A. I can not place him; no.

Q. Do you know Fred Cushing Moore, one of the entrymen of this group?—A. Yes, sir.

Q. How long have you known him?—A. Oh, I have known him seven or eight or nine years.

Q. Have you ever had any conversations or negotiations with him concerning these negotiations?—A. I have had conversations with him.

Q. When and where?—A. Why, in Spokane; and similar conversations to those stated with other entrymen.

Q. At what time?—A. Why, I can not state any definite time.

Q. Was it two years ago?—A. Why, I think so. At different times since I have known him. I can not state any definite time.

Q. You had several conversations with him?—A. Yes, sir.

Q. But you do not recall the place or the substance of the conversation?—A. I never—I remember that he was present, or at least I think he was present—at one of these meetings; but as to having any personal conversation with him with reference to that I can not state.

Q. And any recollection you have of any conversation had in his presence between you and him or the other entrymen would be merely that stated in the meetings already described by you?—A. Just about, practically, I think.

Q. When did you last meet him?—A. Why, he was a witness in the same mining case that I referred to the other day, that Mr. Johnson was also a witness in. I met him there.

Q. That was just a short time ago, wasn't it?—A. Yes; just the past week.

Q. Did you have any conversation with him concerning these entries at that time?—A. Why, yes; I had a conversation, I think.

Q. What was the substance of it?—A. Why, as to the substance of this hearing with reference to obtaining our patents.

Q. Did you at that time discuss anything about any combination or joint developments, or anything of that sort?—A. No, sir; I never did.

Q. Or any conversation for the disposal of this property to other persons than the entrymen?—A. No, sir; I never did.

Q. Are you acquainted with Charles Sweeney, one of the entrymen in this group?—A. I have met him.

Q. When?—A. Why, I met him at different times ever since in the nine or ten years. I have not seen him for several years.

Q. Have you had any conversations or negotiations with him concerning these entries?—A. No, sir.

Q. At any time?—A. No, sir; at no time.

Q. Are you acquainted with Byron C. Ribblett, one of the entrymen of this group?—A. No, sir; I am not acquainted with him.

Q. Have you had any negotiations with him through an agent or any person other than yourself?—A. No, sir; I have not.

Q. Are you acquainted with Alfred Page, one of the entrymen in this group?—A. Yes, sir.

Q. How long have you known him?—A. Several years.

Q. About how many years, Doctor?—A. Why, I think I met him shortly after going to Spokane. I think probably ten years, say.

Q. Have you ever had any negotiations or conversations with Mr. Page concerning these entries?—A. Not that I can personally recollect.

Q. Have you ever negotiated with him through any agent or any person other than yourself?—A. No, sir.

Q. Are you acquainted with W. W. Baker, an entryman in this case?—A. I believe I did meet him. He is in Walla Walla, isn't he?

Q. Yes.—A. Yes.

Q. How long have you known him?—A. Why, I have a recollection of meeting him once.

Q. About how long ago?—A. Oh, about two or three years ago.

Q. Have you ever had any conversations or negotiations with him concerning these entries?—A. No, sir.

Q. At no time?—A. At no time.

Q. Are you acquainted with Frederick Burbidge, another entryman in this group?—A. Yes, sir; I have met him.

Q. How long have you met him?—A. I merely met him and was introduced to him. I have never had any personal acquaintance with him.

Q. Have you ever had any conversations with him concerning these entries?—A. No, sir; I never did.

Q. Or negotiations?—A. No, sir.

Q. Are you acquainted with Reginald K. Neill, one of the entrymen of this group?—A. I also think I met him, but I can not place him.

Q. Can you recall when you met him?—A. Why, I think Clarence introduced me to him once. He was, I believe, running a furniture store in Spokane.

Q. But that was how long ago?—A. Oh, that was several years ago.

Q. Is that the only meeting you had with him?—A. That is the only one I can place. I know I met him somewhere, and I think that is the place—that is the time and place.

Q. Have you ever had any negotiations, personally, or otherwise, with him concerning these entries?—A. No, sir.

Q. Are you acquainted with Joseph H. Neill, one of the entrymen in this group?—A. No, sir.

Q. Are you acquainted with Miles C. Moore, one of the entrymen of this group?—A. Yes, sir.

Q. How long have you known him?—A. Why, four or five years.

Q. Have you ever had any conversations or negotiations with him concerning these entries?—A. Not personally; no.

Q. Have you through an agent or otherwise?—A. No, sir; I knew he was interested, the same as myself, in putting up money for Clarence in that way.

Q. How did you learn that?—A. Well, I knew that he had through Clarence—I guess through him more than anything else.

Q. Are you acquainted with John A. Finch, one of the entrymen of this group?—A. Yes, sir.

Q. How long have you known him?—A. Seven or eight years.

Q. Have you ever had any conversations or negotiations with him concerning these entries?—A. No, sir; I never had any negotiations; I had conversations.

Q. What was the substance of any conversations you had with him concerning these entries?—A. Oh, merely the fact as to the quality of the coal up there, and the probability of us getting our patents for our different entries.

Q. Did you ever discuss the question with him, of combining for the purpose of operating these properties?—A. No, sir; I did not.

Q. As a matter of fact, you never discussed that question, as I understood your direct examination, with any of these entrymen?—A. That is true; I did not.

Q. Are you acquainted with Walter B. Moore, one of the entrymen in this group?—A. Yes, sir.

Q. How long have you known him?—A. About three or four years.

Q. Have you ever had any conversations or negotiations with him concerning these entries?—A. Why, just practically the same as I have stated with reference to Mr. Finch and others.

Q. Nothing other than that?—A. Nothing.

Q. Are you acquainted with Arthur D. Jones, one of the entrymen in this group?—A. Yes, sir.

Q. How long have you known him?—A. About five or six years.

Q. Have you ever had any conversations or negotiations with him concerning these entries?—A. No, sir.

Q. At any time?—A. No time that I can recollect.

Q. Do you know Orville D. Jones, one of the entrymen in this group?—A. I believe I had.

Q. How long have you known him?—A. Why, several years.

Q. Have you ever had any conversations or negotiations with him concerning these entries?—A. No negotiations. I have had conversations, practically the same as stated with the others.

Q. Have you or did you ever discuss the combining of these entries for the purpose of development or otherwise?—A. No, sir; I never did.

Q. Are you acquainted with W. H. Warner, one of the entrymen in this group?—A. No, sir.

Q. Are you acquainted with Frank A. Moore, one of the entrymen in this group?—A. I do not think so; I can not place him.

Q. Are you acquainted with Nelson B. Nelson, one of the entrymen in this group?—A. No, sir.

Q. Doctor, I hand you Government Exhibit 5 and ask you to examine it and state if you ever at any time since you became interested in Alaska received a statement of account as set out in this exhibit, and if so, from whom, and for what purpose.—A. I can't particularly recall that statement. I think probably I have had, though.

Q. From whom did you receive this statement which you now seem to recall?—A. If I received it, it would be from Clarence Cunningham, I guess.

Q. Do you not recall, definitely, however, that you ever did receive it?—A. I do not; no. I would state I received statements, but I never paid particular attention to them. I was always busy, and pigeonholed them. I never went into them. I never paid particular attention to them, feeling that Clarence Cunningham would look after my particular interest, and I did not ever bother with it.

Q. If you ever did receive such a statement as that set out in Government Exhibit 5, or any other statements concerning these entries, would they be in your possession at this time?—A. I think not.

Q. Why not?—A. Well, as I said, I did not place any importance to them and I did not save them.

Q. I understood you to say you had pigeonholed them?—A. Well, I did at that time probably, and later pigeonholed them. Just going away here recently I cleaned out my desk and I did not run across any such statement.

Q. Do you recall having taken them out of your pigeonholes and destroyed them?—A. No, sir.

Q. Have you any particular reason for believing they would be destroyed other than from your ordinary custom of cleaning out pigeonholes?—A. No, sir; I have no particular reason for believing they would be, any more than they were there, and I presume in the road, and took up room.

Q. Is it customary for you to destroy statements of account or matters relating to your business affairs that way?—A. Yes; where I think they are no particular value to me.

Q. I now hand you Government Exhibit 6, and ask you to state whether at any time you received such a communication and statement of account as appears in this exhibit; and, if so, from whom?—A. I can not recall that particular statement. I probably received it, but I don't remember it.

Q. What makes you think you probably received it?—A. Well, I know I have received statements, but this is a lengthy and comprehensive statement; and, as stated before, I do not remember it, and, in fact, probably I never read it.

Q. I suppose if you had received it, it would have met the same fate as that stated with reference to Government Exhibit 5?—A. Quite likely, yes.

Q. I now hand you Government Exhibit 8, and ask you to state if you ever received such a statement as this; and, if so, from whom?—A. Well, I would have to give the same answer probably. I probably did receive it. I don't recollect reading it.

Q. The same remark you have made concerning the other two exhibits I have shown you will apply equally to this?—A. Yes.

Q. I now hand you Government Exhibit 9 for the purpose of having you give me what you know about that, and if you ever received such a statement; and, if so, from whom?—A. I probably received that from Clarence Cunningham and probably the same—

Q. (Interrupting.) The same answer with respect to this?—A. Yes.

Q. Which you made with respect to the others that I have shown you?—A. Yes.

Q. I now hand you Government Exhibit 10 and ask you to state whether you ever received a document such as stated in this exhibit, and if so, from whom?—A. Don't recollect of ever reading that [examines paper].

Q. As far as you know, you never have?—A. I do not recall it.

Q. You never received this before?—A. No, sir.

Q. I now hand you Government Exhibit 3 and ask you to examine the same, and state whether you have ever seen a journal in the possession of your brother, Clarence Cunningham, setting out the items as indicated on this exhibit. In doing so I shall not ask you to pass any opinion on any part of this exhibit other than that which purports to be a copy of the journal referred to.—A. This is all supposed to be the journal, is it?

Q. Yes.—A. I never saw Mr. Cunningham's journal nor any other of his books with reference to the Alaska dealings.

Q. I now direct your attention, Doctor, to an item on this exhibit, on page 2 of the copy of what is described as "Clarence Cunningham Journal," which reads, "J. G. Cunningham, Spokane, \$500," and I will ask you to state whether you recall ever having made such a payment to Clarence Cunningham at the time indicated?—A. I can not personally recall any specific or particular payments. I know I made him a number of payments, but any specific one I can not recall.

Q. Do you deny you made this payment at this time?

Mr. GRAY. I object to the form of the question.

A. No, sir; I won't deny it.

Q. I now call your attention to page 6 of the journal as set out in this exhibit whereon appears, under date Catalla, Alaska, September, 1903, a statement which reads, "J. G. Cunningham, \$250." Have you any recollection of that item?—A. No particular recollection. I will have to give the same answer.

Q. Then in case of any payments made by you to Clarence Cunningham, you feel you can make only such answers as already made

to the items I have called your attention to?—A. I say I know I made him payments, but the specific items, or the specific amount I made, I have no doubt they are absolutely correct, but I can not recall particularly.

Q. Do you recall approximately how much, Doctor, you paid to Clarence Cunningham altogether in connection with these Alaskan entries?—A. Why, it is approximately, I know, somewhere between—well, it is in the neighborhood of \$5,000; maybe a little more or a little less that I have paid, but nearly \$1,600 of that went to the Government.

Q. I noticed in a copy of the journal, as set out in Government Exhibit 3, that you are credited with 14 different and distinct payments in connection with these entries. Have you any reason to believe that you did not pay that money?—A. No, sir; I have no reason to think so. I have never counted them.

Q. Do you know anything about these so-called squatters that were bought out by Clarence Cunningham, who had originally occupied the ground now entered by some of these entrymen, or all of them?

Mr. GRAY. Objected to as incompetent, irrelevant, and immaterial.

A. All I know about them is what I stated in my previous answers and evidence—that Clarence stated that there was some squatters there claiming these lands as coal claims.

Q. You are not acquainted with any of them?—A. No; I have no knowledge of them.

Q. Had no correspondence or dealings with them?—A. No, sir; not that I ever knew about.

Q. You refer to an original agreement concerning the oil lands that were being looked into in Alaska by Clarence Cunningham. What do you mean by that?—A. Why, as I stated, that Clarence Cunningham—or that I had first sent another party up there on two previous trips.

Q. Who was that party?—A. Doctor Bruner and Doctor Marshall.

Q. Doctor Bruner. Do you remember his initials?—A. No, sir; I don't.

Q. How do you spell his name?—A. B-r-u-n-e-r.

Q. And also Doctor Marshall?—A. Yes, sir.

Q. Do you recall Doctor Marshall's initials?—A. Yes; it is A. S.

Q. A. S.?—A. A. S. Marshall.

Q. Continue, please?—A. Well, Doctor Bruner and Doctor Marshall went out to locate these oil lands, and after their return Doctor Bruner went alone the second time; and then I, together with Mr. Davidson, put up Clarence's expenses to go up and further look into the report.

Q. And that was really how Clarence's relations to the Alaska coal fields began?—A. Yes, sir.

Q. Now, where did Doctors Bruner and Marshall live at the time you became acquainted with them and had this arrangement with them?—A. Doctor Marshall lived in Spokane.

Q. Doctor Bruner?—A. Doctor Bruner—I do not know as he had any permanent address. I think he came from Alaska. He has been a kind of a prospector for a long time.

Q. Were they experienced in such matters as oil wells and coal mining?—A. No, sir; I think not.

Q. Did they go to Alaska for the purpose of examining the fields themselves?—A. Yes, sir.

Q. Did they have any engineers with them for the purpose of looking into them?—A. No, sir. They went for the purpose of locating them. Doctor Bruner had reported that he had examined them and Doctor Marshall went in my interests. I did not know Doctor Bruner previous to that, and he went in my interests to see that they were located and that the reports were true.

Q. Were any oil locations made by you?—A. Yes, sir.

Q. By Doctors Marshall and Bruner?—A. Yes, sir.

Q. Were they in a different part of the field than the present entries?—A. Do you mean the present coal entries? Yes; as I understand it they are.

Q. Was there any relation whatever existing between them and these coal entries on which you now hold a claim?—A. Well, no more than they were through their locating themselves, and coming back with the reports that there was coal land there.

Q. Where, as far you know, are Doctors Marshall and Bruner now?—A. Why, Doctor Marshall is in Spokane; and Doctor Bruner, I can't state where he is.

Mr. SHERIDAN. That is all.

Redirect examination by Mr. GRAY:

Q. You are now and ever since the year 1902, and during that year, have been engaged in the general practice of medicine and surgery at Spokane?—A. Yes, sir.

Q. You are general surgeon in Spokane for the Great Northern Railroad?—A. Yes, sir.

Q. And have been for a long time past?—A. Yes, sir; several years.

Q. The agreement you referred to on cross-examination was an agreement between Messrs. Bruner and Marshall and yourself?—A. Yes, sir.

Q. Relating to oil lands?—A. Yes, sir.

Recross-examination by Mr. SHERIDAN:

Mr. SHERIDAN. Just a few more questions.

Q. Are you a property owner?—A. Yes, sir.

Q. I mean where you reside?—A. Yes, sir.

Q. Have you ever transacted any business in connection with your property interests for yourself?—A. Yes, sir.

Q. What kind of property do you hold in your community?

Mr. HUGHES. That is wholly immaterial, and we object to it upon that ground as well as upon the other grounds that it is not cross-examination.

Mr. GRAY. It is irrelevant as well.

Mr. SHERIDAN. Read the question, please.

(Question read.)

A. Why, I have some land.

Q. About how many acres?—A. Oh, I could not hardly state off-hand.

Q. Just roughly?—A. I had a large tract of land that I was a quarter interested in, about 8,000 acres in one tract. I had a half interest in 80 more acres, and I have a third interest, I think, in about 1,200 or 1,300 acres.

Q. All in Idaho?—A. No, it is all in Washington. I have some lands scattered around the city.

Q. Interested in a commercial establishment of any sort?—A. Yes, sir; I am interested in one drug store.

Q. That is about all, is it, of a commercial nature, of the property interests that you have?—A. Yes. Lots of mining stock and different investments of that character.

Q. You have been a property owner for a number of years, have you?—A. Yes.

Q. Do you attend to business of the nature of these matters for yourself?—A. Not very often, no.

Q. Transact them through an agent?—A. Generally transact them through an agent or an attorney.

(Witness excused.)

(Adjournment taken to November 22, 10 a. m., 1909.)

SQUIRE C. CHEZUM, a witness produced on behalf of the claimants, being first duly sworn by the commissioner, testified as follows:

Direct examination by Mr. HUGHES:

Q. Give your full name.—A. Squire C. Chezum.

Q. What is your business, Mr. Chezum?—A. Miner.

Q. What kind of a miner?—A. Well, I am a hard-rock miner.

Q. Been engaged in mining and prospecting?—A. Yes, sir.

Q. For how long?—A. 1872.

Q. Including coal mining in any of its branches?—A. I never had any experience in coal.

Q. Never mined coal?—A. Mined coal, no.

Q. Mr. Chezum, were you ever engaged in doing any work on what is known in this proceeding as the Cunningham group of claims?—A. Yes, sir.

Q. When did you first begin any work there, and in what capacity?—A. In 1903. I was employed as foreman.

Q. At what time in 1903?—A. I think it was along in the month of July, and probably the fore part of July.

Q. Did you have charge of a crew or crews of men engaged in work?—A. Yes; I had; during the summer of 1903; I had charge of one crew only, the crew that was practically and directly under my supervision.

Q. How large a crew was that?—A. Well, we had from 7 to 15 or 16 men.

Q. What was the nature of the work?—A. Prospecting, trail building, etc.

Q. What was done in the way of building trails and for what purpose were the trails built?

Mr. SHERIDAN. I object to the question as calling for a conclusion of the witness.

Mr. HUGHES. You may strike out the latter part of the question, not because I yield to the objection, but because I do not want to embarrass the question with one part being objected to and the other not being objected to. Refer to the first part of the question.

(Question read by the reporter as follows):

What was done in the way of building trails?

Mr. HUGHES. Just briefly state what was done in the way of building trails over the various properties?

A. In that country, in order to get supplies in anywhere, we had to build trails, as it was a physical impossibility to get through the country until you got above timber line, unless you go by the water courses or the streams, for there is a heavy undergrowth of brush in most places, and windfalls, and you almost have to build a road anywhere where you put a camp.

Q. Now, Mr. Chezum, in what part of this group of claims were you engaged in the summer and fall of 1903 while you were doing work there in charge of that crew?—A. Principally in the Clear Creek country. This stream here [indicating on Government Exhibit No. 37], the Clear Creek country. In fact, I started a trail from the warehouse up Clear Creek and put in camps along at different points and worked along up until I got up to I think somewhere in about here [indicating on map].

Q. Was there a cabin at the end of the trail, a small cabin, used during exploration work on the upper or northeast end of the plat?—

A. No; that summer there I put in a grade there in the side of the hill and put in a camp. There is a cabin farther up, nearer the northerly end.

Q. When was that built?—A. That was built in 1903.

Q. The cabin appearing here [referring now to map marked Claimant's Exhibit No. 1]—appearing here in the black square marked on what is designated as the "Ludlow claim?"—A. Yes; I should judge it would be in there somewhere.

Q. You spoke of a warehouse. Where is that warehouse situated?—A. The warehouse was situated about 1 mile below the mouth of Stillwater, which I do not see here on this map.

Mr. GRAY. Where?

A. The mouth of Clear Creek, where it empties into the Stillwater.

Q. At the mouth of Clear Creek, where it empties into the mouth of the Stillwater?—A. Yes, sir.

Q. Was it down near the banks of the Stillwater Creek; this warehouse?—A. Yes; it was down near the bank of Stillwater Creek, at the head of canoe navigation.

Q. What was the character of the work? Describe it briefly, that was done by you that summer.—A. Oh, it was all prospect work, in the way of prospecting ground and looking up coal wherever we could find it; and along later in the fall we did some tunnel work out near Clear Creek camp at the falls.

Q. Now, for a moment, without reference to this map, the description which you give by the words "prospect work" may be more clear to your mind than it is to mine, or to one who has not been engaged in that kind of work. What I want you to do is just briefly state what you did.—A. Well, that would be in developing the different showings of coal that we found on these claims.

Q. How did you do it?—A. By pick and shovel and powder. Whenever we had rocks to contend with we blasted, and on other openings we used the pick and shovel.

Q. You mean upon the ledges?—A. Upon the veins of coal.

Q. Where would you usually take up and discover or find evidence of a vein?—A. Well, usually in that country, the surface being covered more or less with wash, you would find your coal crops in the banks of the creeks where the water came down, especially after a freshet—and they come quite often in that country, freshets do—and usually as your coal breaks you pick it up and get your indications of coal along the creeks, and then they could be picked up and traced through the country.

Q. Now, then, when you found anything along the creek, what would you do in order to make an examination?—A. Well, you would follow up on the fold until you found your seam and pinched sufficient to get the dip and the strike of the formation and watch your coal, and take a line and go up the hill and across the gulch, as the case might be.

Q. Well, your mind would be entirely in making an effort to discover what the dip and strike of the vein was and the thickness and the character of the veins. What did you do in order to prepare yourself for the necessary work to follow them out?—A. Well, that is what I was doing. I was in the business of prospecting, because if you will allow me to state what—

Q. That is what I want you to do—go on and state.—A. The majority of my employees were natives and they had no idea of work. They were very crude, and still they were good workers and faithful workers, but they did not have any idea of prospecting, and consequently it devolved on me to get out and find the coal for them, and then, of course, I would put them in to open it up.

Q. Now, then, after you had found and discovered coal along the gulch and set your men to open it up, what would you do in the way of prospecting to trace that vein?—A. Oh, I did all the tracing. That is because there was isolated places where coal was sticking out of the ground; and in some cases they would go in and open it up; but almost invariably I went along and traced the veins.

Q. What did you do; to try to trace along the strike of the vein?—A. Yes; that was our intention.

Q. How would you do, or what would you do, when you determined upon the presence of the coal farther along from the point where you had discovered it on the gulch?—A. Oh, we followed it up as far as we could trace it.

Q. Across the gulch?—A. Yes; as far as we could find it; and then often we ran into a section where there were heavy slides, alder slides, and where the action of the elements on the surface and the contour of the country was such it would slide over and get deep, and then we would have to skip a certain section of the country until we could get to another section of country where we did not have to sink so deep through the débris.

Q. Sometimes, in attempting to follow the strike of the vein, you might have to pass through three or four or five hundred feet of distance before you found another place where it was favorable to make an opening, is what you mean?—A. That is what I mean.

Mr. SHERIDAN. I must object to leading the witness. He is perfectly competent to testify as to what the topographic conditions of this group of entries may be, and any fixing of distance—four or five or six hundred feet—by Mr. Hughes is irregular and improper.

Mr. HUGHES. I am anxious to make as much headway as possible, and I merely suggest that the objection is made especially that the question is leading; and the commissioner, in passing upon it, probably understands the objection without argument.

Mr. SHERIDAN. So will the General Land Office.

Mr. HUGHES. I mean the Commissioner of the General Land Office.

Q. Now, Mr. Chezum, go on and state to what extent you covered the ground in prospecting there during the summer and fall of 1903.—A. Well, in 1903 I covered from Clear Creek, the drainage.

Q. On both sides of Clear Creek?—A. Both sides of Clear Creek; the drainage from the break and Canyon Creek, from the strike of the ridge dividing Canyon Creek and Clear Creek, and the water drainage running into Clear Creek from the westward and the south-westward, as it really would be. I covered pretty much all of that country and traced the coal as near as we could. That work, I think, we finished up there was along in November.

Q. Now, to make your testimony clear, looking at this map, marked "Claimant's Exhibit No. 1," the territory that you covered, beginning on the east, would be the crest of the ridge between Canyon Creek and Clear Creek?—A. That is it.

Q. And extending from the north line of these claims, from south to north?—A. Yes, sir.

Q. And how far south?—A. Down to the south line. In fact, I did some prospect work south of the south line, but I could not find any coal.

Q. And from that line, on the general line on the east, your work covered the intervening ground westward to the adjoining line on the westward?—A. Well, we will say a general line, where Monument Mountain is located—where is Monument Mountain on this map? Why, the drainage from this all comes into Clear Creek, as you see there.

Q. Then there would be a ridge found between Clear and Trout creeks?—A. Yes; that is it. That is the country my crew covered principally. There was probably a little of it done in here [indicating], which was worked from the Trout Creek side.

Q. Now, Mr. Chezum, was there any crew of men working to the eastward between the ridge that you have described as the easterly boundary of your work and the following Canyon Creek?—A. Yes; John Harlan had crews of men—

Mr. SHERIDAN. I will object.

Q. Calling your personal attention—your personal knowledge?

Mr. SHERIDAN. I object to the witness testifying concerning the crews working that he would not know of of his own knowledge and were not under his charge.

Mr. HUGHES. I am not asking him to state if he had no knowledge.

The COMMISSIONER. Answer the question.

A. Shall I answer the question?

Mr. HUGHES. Yes. Read the question.

(Question read.)

Q. Yes?—A. Yes.

Q. Do you know where that camp was?—A. Located near the mouth of Meary Creek, where it comes into Canyon Creek. I think it is just about nearly on the upper line.

Q. And the claim marked on this map as, what?—A. The Wabash.

Q. Did you, in the course of your prospecting for the purpose of being able to direct your crews to work, see any of the work—see any of the work being done by Mr. Harlan and his crew?—A. No; I did not go to see the work, but Harlan used to pass on his way to headquarters, his proposed camp, and jumped off and passed through and informed me—

Mr. SHERIDAN. I object.

Mr. HUGHES. I do not want what information you got from him nor what was said. Did you at any time—A. No; I was not over there on that creek; I was not down there, over on Canyon Creek, on the Canyon Creek side, further than the top of the ridge.

Q. Now, while I am on this subject, I will ask you if during the fall, spring, or summer of the year you were over that ground any?—A. Nothing further than that.

Q. Over the ridge, down along the eastern boundary?—A. All of it. It is above timber line, and it is quite easy of access.

Q. I will ask you to what extent you were over the ground, and if, from your examination, you know whether openings had been made during the preceding summer on any of the claims indicated on this map lying to the east of this crest of the ridge you have described?—

A. Yes; we made some near the top of the crest. Is this the line of the top of the ridge?

Q. What is that line?

Mr. SHERIDAN. That is the top of the ridge.

A. This ridge breaks off very abruptly. In fact, there is places there, a half a mile at a stretch, that a man could not go down.

Mr. GRAY. Is that the ridge along Canyon Creek?—A. That is the ridge along Canyon Creek. And that part was very easy; wherever you could get down and get a foothold you could go down and cross-cut a vein of coal, and it showed it absolutely there. You could take a pick and crosscut it in a few minutes. That work all along there was very easy work, because the mountain had broken away and broken the coal off and left the veins in their dip right in there.

Q. Did you, the following spring, make any openings yourself on this ridge on this claim?—A. In the following spring or in the following summer, after the snow had gotten off, so that we could go over there, we did.

Q. Now, did you see, while doing your work or at any time going over the grounds, any work done by Harlan the preceding summer and fall?—A. I don't remember. Harlan's work was principally along Canyon Creek, and I was not over there, and I don't remember seeing any of Harlan's openings.

Q. What did you do after the snow came in the fall, and from then on until spring?—A. I went to the Trout Creek camp after we had got snowed in up here. I went to Trout Creek camp, and that winter we did tunnel work. We worked on several different tunnels.

Q. Did you lay out the course and direct the work?—A. Yes, sir.

Q. Now, I do not care to have you go into the question of the amount of tunnel work in detail at all, but I simply want to know what was the character of that work?—A. Well, it was prospect work, in the cheapest way that we could do it in to make a showing, as it was done for the purpose of ascertaining if that coal went down, and to ascertain the strike and the dip of the veins and if it was really of commercial quality.

Q. And also the thickness of the vein?—A. Yes, sir.

Q. Did you carry the tunnels in a sufficient distance to see whether the vein had continuity beyond the exposure on the surface, or broken and crushed out, or simply a casual deposit?—A. Yes; in some cases we did not go in far enough to really determine that.

Q. Yes; but in some cases you did?—A. Yes.

Q. How far in did you drive any tunnels intersecting or opening ledges or veins beneath the surface exposure into the mountain?—

A. From 100 feet—one tunnel was driven over 100 feet through rock, and when we got in to where I figured we would get the vein, I did not get any vein, and then we drove for 250 feet on a black stringer; in fact, we did not get coal in the tunnel at all until after we had made a raise and got the coal above.

Q. You made an up raise?—A. Yes; we came back toward the tunnel mouth, and ran back 60 or 70 feet, and then raised to an opening which was about 80 feet from the surface above.

Q. Did you strike the coal?—A. Yes; we struck the coal there.

Q. Had you driven this tunnel for the purpose of intersecting that?—A. For the purpose of catching that vein.

Q. Did you find that the vein had faulted at all, or changed its dip?—A. Yes; we found that it had faulted. It had dropped and raised and got a bench of coal, and then picked up the vein, which on making an estimate of the dip that would carry from where we had been running along it parallel with it on this black stringer; or, in other words, if we had continued our tunnel straight ahead in the first place far enough, we would have caught the vein.

Q. How many tunnels were driven, or approximately how many at different places along Trout Creek?—A. Oh, I don't know. I probably could tell you approximately.

Q. Well, that is all I want or am asking for.—A. Eight or nine, I think.

Q. How far up the creek was the highest or uppermost tunnel that was driven in on any coal exposure, so as to follow the vein in its dip?—A. Well, there is—

Q. The black mark on the claim you point to is on the Tenino claim that you are now pointing to as indicating or representing the cabin as shown by the testimony of former witnesses. Now, was there—A. That is the cabin there.

Q. Yes. Was there any tunnel driven above that?—A. Yes; there was a tunnel driven up in here [indicating on map]. Now, I would not be positive whether that tunnel—it may be about—oh, I judge it must be 1,000 feet above the camp there.

Q. Above; you mean to the northward?—A. Yes; on the left-hand side of the creek as you go up—that would be on the west side of the creek.

Q. You were engaged doing this tunnel work during the winter of 1903-4?—A. Yes, sir.

Q. On Trout Creek?—A. On Trout Creek.

Q. Now, when the winter broke, in the spring, so you could get out and do surface work, what did you do?—A. Well, when the snow disappeared in the spring of course we started in then to continue our prospect work in order to determine where this coal went. I will say here, for the benefit of Mr. Sheridan, who has not been over in

that country, you can not do anything on the surface in the winter time.

Q. Well, now, what did you do?—A. Well, we continued our explorations along the lines—the same lines as we did in the summer previous on the Clear Creek side.

Q. Continued where? What sort of exploration work did you do, or prospecting work?—A. Well, everything; all along through the southern boundary here; enough, in fact, generally, all over the country, except the sections which had been covered previously.

Q. Covered along the south boundary that you have spoken of, doing some work?—A. Yes; in the summer of 1903.

Q. Did you go over to the region west of Trout Creek?—A. Oh, yes.

Q. Did you have a crew of men?—A. Yes, sir.

Q. Did you prosecute that work in the same manner you did during the previous summer?—A. Yes, sir.

Q. That is as much of the detail work as I care for now, Mr. Chezum. Now, prior to this time—that is, prior to the summer of 1904—had claims been staked upon the ground?—A. Yes, sir; in fact, the claims were staked; at least I found stakes when I went on the work.

Q. Now, were they staked to correspond with the claims as they appear on this map, claimants' Exhibit No. 1?—A. No, sir; the strike of these coal measures was practically southwest and northeast, and these claims were staked to conform to the strike of the veins, the same as you stake any miner claim.

Q. Now, Mr. Chezum, during the summer and fall of 1904, was surveying done on these claims by a deputy mineral surveyor of Alaska?—A. Yes, sir.

Q. Did they survey out the boundaries and stakes?—A. Yes, sir.

Q. They were engaged in that work as long as you remained there?—A. Yes, sir.

Q. Beginning the latter part of July?—A. Somewhere in July. I don't just remember what time they came up there. Yes; they—that was the location survey, really.

Q. Who was doing that work?—A. Mr. C. H. Hubbell, who came in there sometimes, I think it was in July, but I would not say what time. I know the season was getting short, and well advanced.

Q. You have examined, and looked over this map marked "Claimants' Exhibit No. 1," and assuming that the streams are approximately correctly located as they appear upon the ground, I will ask you if examining it you find it corresponds substantially with the premises as you know them from personally working over them and studying them?—A. Yes, sir; I think it does.

Q. Looking at that map, I will ask you to state how many openings—that is, cuts and excavations made for developing and opening the seams or veins of coal existing upon these properties—were made on the entire group, as near as you can say?—A. I would not undertake to say, there are hundreds of them. You can imagine, going out with a crew of men for two or three different seasons when you have got coal sticking out of the ground in so many places where a man makes as many as ten openings a day, I would not undertake to state how many there is. There must be several hundred at least.

Q. Examining this map again, I will ask you to state, Mr. Chezum, from your own personal knowledge of the work done, or witnessed by you on these claims, whether or not openings, or tunnels, or excavation work for the purpose of exposing the veins of coal was done on all these claims, and if not, state upon which?—A. Well, I think, according to my best knowledge, that there is coal openings on all of these claims unless it be the 3 claims that would be on the northwest corner, wouldn't it?

Q. Marked what on this map?—A. Frick, Victor, and Cunningham. Possibly there is an opening on the Frick. I would not be positive, because I am not clear just exactly where the corner is, but judging from this trail, there is a lot of work down just in the neighborhood of this trail here, and it is quite possible that the Frick has some coal openings on it, but I would not be positive. I will explain to you, if you will allow me, that this country here is high—

Q. Referring now to the northwest corner?—A. Yes; it is very high, and it is barren country, absolutely bare, and it is dead formation.

Q. That is on the surface?—A. Well, it is what the geological men told me Tokun formation that overlaid the coal, and after prospecting in that field as long as I did, I became familiar with that formation; whenever I got into the Tokun formation I knew there was no use of looking for coal, and it seems to be capped heavy, and breaks off perpendicularly, and the coal shows all along there.

Mr. GRAY. For the purpose of the record, that trail is marked "Chezum trail" across the southern corner of the group you are speaking of?—A. Yes, sir.

Q. Now, on this map, the head of Trout Creek is not carried beyond the Maxine claim, but I call your attention to the map introduced by the Government, and asked you if you have observed this map, being Exhibit 85, from which it appears that the head of Trout Creek—A. Branches; yes.

Q. Well, one of the branches constituting the headwaters of Trout Creek extends up across the southeast corner to nearly the east line of the Cunningham claim, and I will ask you if you have ever been up this branch of Trout Creek?—A. Yes, sir.

Q. Now, I will ask you if the coal outcrops along that creek?—A. Yes, sir; we found coal up there quite always until we struck that Tokun formation, but just how far, I am not able to state; it may have been on the Cunningham claim.

Q. When you found coal, did you make cuts or openings on it?—A. Oh, yes; that is what I was there for to try to do, open up all the coal area I could.

Q. So that as to the Cunningham claim, and as to the Frick claim, what is your best judgment?—A. Well, it might be or might not on these two.

Q. What are you able to say—that is, as a fact—in respect to all the rest of these claims as to whether or not there was coal openings made for the purpose of developing up the coal measures themselves upon the ground?—A. All the others I saw had a number of coal openings; of course, understand certain sections of that field have much more coal upon them and in them than others have; but that was my work up there, to try and define the extent of that coal and find out how far it extended to the south.

Q. I will ask you now whether in your work in doing your prospecting you followed, wherever the rock was exposed, the dip and the strike and the formations in which the coal appeared?—A. Yes, sir.

Q. You have already stated that you did tunnel work along Trout Creek, and along its slope and along Canyon Creek upon its slope?—A. Yes, sir.

Q. And you also testified that you fully prospected yourself to ascertain the strike upon the streams of the vein?—A. Yes, sir.

Q. And made openings at places along the strike that struck you as being available?—A. Yes, sir.

Q. And that you found coal at many of these openings or all of them?—A. Yes, sir.

Q. Now, I will ask you whether from that work you are able to demonstrate whether or not the coal or its dip descended under the Cunningham, Victor, and Frick?—A. Absolutely so. That coal dip invariably in the upper stratas to the northward.

Q. Was any of this work done for the purpose of determining whether or not the coal did extend under these claims?—A. Oh, yes. And right in that particular field, the layer is very regular, lying under Monument Mountain there, over near the head of Trout Creek, it lays regular with a uniform dip and strike; while in the south part of the field it is more disturbed and the strike and dip is not so pronounced. In fact, that varies in some places—you can get almost any kind of a dip.

Q. What is the character of the weather, Mr. Chezum, in that country?—A. Well, it rains a great deal; and in the winter time, when it is not raining, it is snowing.

Q. What is the effect of the rainfall and the thawing of the snow upon the surface of the ground?—A. Well, the surface in that country, especially in that country where it is covered up with debris, it is like a sponge, it is soft and it has a tendency to slough and fall in. For instance, you could go to work and put in an open cut in some of these hillsides where the soft sandstone and shale is as high as that ceiling and after one of these big, heavy rains, why, it would slip in and leave a bench, and in a year or so, with the tropical growth in the summer, it might just grow right over it. As a matter of fact, I have seen trails up there that I built in 1905 that only for the place I would never know there had been a trail built there—where it goes through the salmon berry bushes.

Q. What about the ferns and undergrowth? Do they grow with the same tropical profusion as they do in this country?—A. Yes; they grow very rank.

Q. Now, some testimony has been given here by witnesses for the Government of examination made last fall—this last fall or summer—during July and August of this year. I will ask you whether a person going over that ground would be, in July, 1906, able to discover a large part of the openings made by you, and which you have described, and which were made in the years 1903 and 1904?—A. What is the question?

(Question read.)

A. Well, I would say that they could not. In fact, I think have had many openings made there which would be absolutely impossible to follow them now.

Q. Now, in order to make clear your answer, I wish you would state the reason why you say they would not be discovered?—A. Well, from the nature of the soil and the formation, would slip in and become covered with the rank undergrowth which is prevalent throughout that country. A growth there of ferns and other undergrowth.

Q. You have been there every season since you first went in there, in 1903? I mean in that country, in the Bering River country?—

A. Yes; I have been there.

Q. A part of each year?—A. A part of each year—hold on—yes; I have been there every year.

Q. You have some claims lying to the northward of this group of claims?—A. Yes, sir.

Q. Which you have been looking after and representing certain claimants?—A. Yes, sir.

Q. And in going in and out I will ask you whether or not your route takes you over some of the trail across this property?—A. Yes, sir; it does.

Q. Across this group of claims?—A. Yes, sir; it does.

Q. Do you know one Jim McGrath?—A. Yes, sir.

Q. Is he up in Alaska?—A. Yes, sir.

Q. What is he doing?—A. He is watchman for the Cunningham group of claims.

Q. Did you, when you quit working there, leave him there in that capacity?—A. Yes, sir.

Q. Was he working under you during any of this prospecting and development work which you described?—A. Yes; he was; I think McGrath was put on the pay roll about the early part of April, 1905.

Q. You think he began work in the early part of 1905?—A. Yes, sir.

Q. But what you have been describing was work done in 1903 and 1904?—A. Well, that is when he went on. He was not with us at the time; in fact, I had never seen him at the time we were doing this principal work.

Q. During the time you were doing the principal part of this development work?—A. During the time I was doing the principal part of this development work; yes.

Q. Now, what did he do when he went on the pay roll?—A. He worked there in the vicinity of South Creek camp, and after the snow came down so we could get out on the hills and done some development work out on the hills, and then when the survey people came up to make the final survey, I put him on that survey.

Q. He worked on that survey?—A. Yes; he worked throughout that survey.

Mr. HUGHES. Take the witness.

Cross-examination by Mr. SHERIDAN:

Q. How old are you Mr. Chezum?—A. I was born in 1856.

Q. Are you an engineer?—A. No, sir.

Q. Are you a surveyor?—A. No, sir.

Q. Are you a geologist?—A. No, sir.

Q. You do not make any pretense of being anything more than merely a practical miner in this connection?—A. That is all.

Q. Do you have any knowledge or any actual mining experience other than this that you have described in Alaska?—A. Never.

Q. When did you first become interested in the Alaskan coal fields?

Mr. GRAY. Objected to as improper cross-examination.

A. In 1903 I went into that country.

Q. How did you go to go up there, Mr. Chezum?—A. I went up there on that oil excitement.

Q. Who sent you?—A. I went of my own accord.

Mr. HUGHES. Objected to as not material.

Mr. GRAY. Also improper cross-examination.

Mr. SHERIDAN. We expect all that. Answer the question.—A. I went on my own responsibility.

Q. Did you represent any other parties or just represent yourself at that time?—A. Just representing myself.

Q. What did you do in connection with the oil excitement up there?—A. Well, when I went in there—

Mr. GRAY. Just a minute. I object to that as immaterial and not proper cross-examination and incompetent and irrelevant.

Mr. SHERIDAN. Answer the question.

The COMMISSIONER. He can answer the question.

Mr. SHERIDAN. There is a difference of opinion as to what is obviously irrelevant. We expect an objection every time we ask a question requiring an intelligent answer from the witness on the other side.

The COMMISSIONER. I do not think he needs to answer as to his conclusion. He may state the facts. These remarks are unnecessary.

A. I looked over the field. I think I went up there and got in there in April, and, in fact, I covered pretty much of the oil field from Eight-Mile, which was some 25 or 30 miles below the town of Katalla—in the Katalla district.

Q. How far is that away, that oil field from the Cunningham group of claims?—A. Well, I should judge it was 8 or 9 miles, roughly speaking.

Q. Did you on the occasion of your making these investigations concerning oil fields in Alaska, did you visit what is now known as the Cunningham group of entries?—A. No, sir.

Q. This was in 1903 when you first went there on this oil investigation?—A. Yes, sir.

Q. When did you first come on to the group of claims described as the Cunningham group?—A. After I had been employed to take charge of this crew.

Q. What year?—A. 1903.

Q. About what month?—A. July. I am not clear as to the real date of that, but my impression it was along the fore part or near the middle of the month.

Q. Who employed you to do this work?—A. Mr. Cunningham.

Q. You were in Alaska, as I understand you, when he employed you?—A. Yes, sir.

Q. And you did not go up there under employment from him?—A. No, sir. In fact, I had never met him but once before I went to Alaska.

Q. Now what was the nature of the contract you had with Mr. Cunningham concerning these claims?—A. Did not have any contract with him.

Q. What instructions, if any, did you have from him?—A. Oh, to go in there and prospect this field.

Q. What arrangement did you have with him as to compensation for this work?—A. \$5 per day.

Q. And how about the crew that you had under you. How were they paid?—A. They were paid by the day.

Q. By Mr. Cunningham?—A. Yes.

Q. Were you called upon to disburse money to them for Mr. Cunningham?—A. Not that summer.

Q. Were you at any time subsequently while engaged in working for these people?—A. Yes, sir.

Q. Funds were supplied to you for this purpose by Cunningham?—A. Yes.

Q. When he was absent? What was his instructions concerning these funds and their distribution to your crew?

Mr. HUGHES. Objected to as not cross-examination and calling for hearsay evidence.

The COMMISSIONER. He may answer.

A. Shall I answer the question?

The COMMISSIONER. Yes.

Q. What was the question? Just read the question.

(Question read by the stenographer.)

A. Well, I do not know as I had any instructions further than any other general foreman would have. If a man I wanted to let him go, or when pay day came, I would pay him off.

Q. How much did you pay these men a day?—A. Well, these Indians, we started in paying them at the rate of \$2 per day; that was the least we ever paid them, and when they became more familiar with the work, became better men, we raised their wages.

Q. Were they provided for in other respects—with their food—by Mr. Cunningham?—A. Oh, yes.

Q. Did you have any particular written instructions about the development or prospecting work that you did on this group?—A. No, sir.

Q. At no time?—A. No, sir.

Q. Did you build trails also, Mr. Chezum?—A. Part of them. In fact I did most of the trail work.

Q. What instructions did you have concerning the building of these trails?—A. That work, I will say, Mr. Sheridan, was left very largely to myself as Mr. Cunningham was there very little, and a great deal of that work I did on my own initiative, regarding the building of those trails to get to certain sections because he was not where I could get to him to consult him about every piece of trail that I built.

Q. Yes?—A. And naturally, having the interest that a man would have who was in charge of work, I naturally went ahead and did the business as I thought best under the circumstances for the benefit of the property.

Q. Well, what was your purpose in building these trails?—A. To get to the different sections of the country to do this development work.

Q. Did you attempt to locate out the corners and survey out the claims so as to know what claims you were on, and where you were doing the work?—A. No, sir; I did not.

Q. Could you of your own positive knowledge testify to what claims any of these tunnels were on?—A. It would be very hard to locate

them. On some of them—on some of these claims we had to get some fixed point to survey from, some fixed object. As a matter of fact, when the survey was going on, I followed up and put in the camps, and looked after putting in the camps, to facilitate the work. I did not carry the chain on this survey, being in the capacity I was in, I did what I could to help the work along.

Q. Yes; now, in 1903 and 1904, was there anybody doing survey work there during 1903 and 1904?—A. Not in 1903, but in 1904 the location survey was made for these claims.

Q. Now, during 1903, while doing this prospecting work over these claims, how did you know you were on the Cunningham group at all?—A. Oh, these claims were staked prior to the time that I went in there.

Q. Who informed you that these represented the Cunningham claims?—A. Well, Mr. Oliver Hartline was there before I was there, and in fact there was no other claims in that section of the country between Trout Creek and Clear Creek.

Q. How did you know that?—A. Well, they told me that there was.

Q. Who told you that?—A. They did.

Q. They told you?—A. Yes, sir.

Q. Now, who indicated to you those stakes that you saw were on the Cunningham claims?—A. Well, I don't know that anyone indicated them to me.

Q. You just simply assumed it?—A. No; I had instructions to go in there and commence prospecting a certain section of the country for this coal, and I did not have any instructions to look up stakes. If I had, I would have known more about the stakes.

Q. Now, where did you locate these as regards living quarters when you started this prospecting?—A. Well, now, what do you mean by that question?

Q. What cabin did you go to live in, if any?—A. Oh, we did not have any cabin there then. When I went on the ground there was nothing on Clear Creek at that time.

Q. So far as your knowledge went, as to what claims you were on, it was based solely on what you had been told about who owned that ground?—A. Why, I went to Trout Creek camp and got an Indian who had been with the men that staked this ground to guide me and take me up to where we had a coal showing, up near the falls. That was where we intended to work to; and this Indian came over with me—Johnny Brenner, his name was—came over with the crew. As a matter of fact, it was an absolutely new country to me. I had never been in it, and I did not know where I was heading for without a guide.

Q. This Indian was your guide?—A. Yes, sir.

Q. Very crude sort of people, these Indians, up there, aren't they?—A. Well, they are as far as guides are concerned; but anything that they know they are very intelligent.

Q. Very intelligent on that point?—A. On trails and going through the country.

Q. Now, when did you first observe any surveying work being done on any of these claims; in what year?—A. When I first did? I think there was a survey made prior to 1904 or before I worked there.

Q. Well, were you present at that survey?—A. No, I was not, but I seen evidence of it.

Q. What survey do you know of?—A. In 1904 is the first survey I have real knowledge of, being on the ground.

Q. Now, what knowledge have you of the survey at the time Mr. Hubbell came in there in July?—A. Mr. Hubbell came in there in July, I think it was in the month of July, some time. May have been a little earlier.

Q. July, 1904?—A. Yes, and made a survey of this group of claims.

Q. Did Mr. Hubbell employ you to assist him in this survey?—A. No.

Q. So you took no part in it?—A. Mr. Hubbell had nothing to do with me at the time; on the contrary, I was there in charge of the work, and I furnished Mr. Hubbell. If he was short a man I saw he had one, and I furnished his camp with supplies, and was with him following him from place to place and to see that he was supplied.

Q. But you took no actual part in the survey yourself?—A. Why, I did not carry a chain.

Q. Were you with him up there while they went over the different claims that they covered?—A. Yes; I was there when they started in on this south line.

Q. Now, just where did they start in, referring to Claimant's Exhibit No. 1 and indicating thereon?—A. Well, as a matter of fact, when he started in, he started in and run a line a quarter of a mile south of here.

Q. South of the Cunningham group?—A. Yes, sir.

Q. And then entered on the Cunningham group?—A. No, he was on the Cunningham group before.

Q. He was?—A. Yes; they had a lot of land staked. There was a lot of land staked in south of here.

Q. South of the Cunningham group, you mean?—A. Yes.

Mr. HUGHES. You mean south of what is the Cunningham group, as shown on this map?—A. Yes; the group about it. Yes. And then, after the first line was run they moved up a quarter of a mile north. You will notice here where Clear Creek is on this map. I have prospected here and over here.

Q. Over all the claims as shown on this map?—A. All through this whole section from the mine clear across.

Q. You don't know them by their names? A. No; I don't know them by their names and I could not tell you the exact place unless it was some fixed up.

Q. On the chart?—A. Yes, but we had prospected here before in a general way, and made numerous openings here and there and then that line was moved up here, and then they started in to survey.

Q. What I want to know is, what actual part did you take in this survey in 1904?—A. Well, as I told you, I looked after them. I looked after them, having charge of the work. If they were short a man I got him; and I moved their camp from place to place and I did all that a man would naturally do in that capacity to facilitate the survey work.

Q. Now, did you do any prospecting at any time on these claims other than that already testified to by you on your direct examination? That covers all you did, doesn't it—the direct examination that you gave to Mr. Hughes?—A. Yes, I think so. It covers the whole field.

Q. Yes?—A. Yes, sir.

Q. Now, this prospect work that was done in the tunnels to which you have referred, in the winter time, did you find any especial difficulty in carrying on the tunnel work in the winter time?—A. In what way?

Q. Well, would it be any more difficult to do it in the winter time than in the summer?—A. The winter time is really the best time.

Q. For tunnel work?—A. Yes; because there is snow on the ground and it is easier to get the work done than in the summer.

Q. Now, do you recall the name of the largest tunnel among all the tunnels you assisted in putting in on this group?—A. No, sir; I do not recall the name of it, but I could tell you about just where it is.

Q. Just about where it is located?—A. Yes, sir.

Q. Where?—A. Within a quarter of a mile below Trout Creek cabin, and that would be here on the west side of the creek.

Q. On what is shown on this map as the Tenino claim?—A. That is what it is shown on the map here.

Q. Now, that was the largest tunnel, was it?—A. That was the largest tunnel. That was the largest coal seam, and I think the largest sized tunnel too.

Q. In what direction did that tunnel go?—A. It went in a south-westerly direction.

Q. About how far in was it to its furthest face from the mouth?—A. My recollection it was between 300 and 400 feet, to my best recollection; I don't know how many feet exactly.

Q. You of course have been in this tunnel frequently?—A. Yes, sir.

Q. About what are the proportions of the tunnel as regards height and width?—A. I think it is $6\frac{1}{2}$ feet in the clear.

Mr. HUGHES. You mean high?—A. Yes; clear of the timber; and I think it was 5 or $5\frac{1}{2}$ at the bottom, as near as I can remember. I would not be positive as to that, although I made patterns for the timber.

Q. Did you assist in taking out what coal was taken out of the tunnel?—A. Part of it. Not all of it, nearly all of it.

Q. Were you there when this tunnel was commenced?—A. Yes, sir.

Q. Did you help open it?—A. I had that tunnel started.

Q. And you had charge of its development throughout?—A. No, sir.

Q. Who else had anything to do with it?—A. When I came out Frank Carey was left there that winter and the principal part of that work was, I think, confined to that tunnel during that winter.

Q. What year was that? 1903-4?—A. 1904. I left in the month of August.

Q. 1904?—A. Yes; I had been in there about thirteen months without coming down as far as Tidewater.

Q. Now did this other party come after you left?—A. No, he worked on this survey before he left, Frank did, in fact he worked for me during the latter part of 1903-4, and I found him an excellent miner and I recommended to Mr. Cunningham that he retain him there.

Q. He worked on this tunnel?—A. Yes; worked on this tunnel across from the house.

Q. Have you any idea of about how much coal was taken out of that tunnel, probably?—A. No; I have not.

Q. What was done with it?—A. I can tell you what was done with it. It was put on the dump.

Q. Just put on the dump? Any of it tipped away from there anywhere or shipped off for any purpose?—A. Oh, no; there might have been a little hand sample taken away, or something of that kind, but nothing else.

Q. Well, it is true, as a matter of fact, Mr. Chezum, that in prospecting the country described by you, that you followed along the creek beds and got the exposures already made naturally and opened them up to determine the seams and their strike, dip, etc.?—A. In many cases it was easier to find this coal cropping. Of course there were some isolated places where you got them on the ridges where the débris had drifted away, but as a rule, in that country where it is so rough, the main coal exposures would be found in the creeks. You see, that country is all cut up with deep gulches or ravines, and great waterfalls—falls there which is 250 feet—I mean sheer fall, and where you have to go a half to three-quarters of a mile around to go 200 yards.

Q. I see. Well, now, under such conditions as that, you opened up where the natural exposures were and made your measurements as a general thing?—A. Well, I made very few measurements, because anything that was worth—wherever we could find coal we opened it; and I made many openings on very poor coal showing.

Q. Yes; I see. But generally on coal exposures that showed?—A. Yes; wherever we could get the best place we did so. All our work, you will understand, was in the nature of prospecting—

Q. I understand that, Mr. Chezum.—A. To determine the extent of that field, because at that time when we went in there we did not know whether that coal was of commercial quality or not, and it required a great deal of prospecting work to ascertain if it would even justify the payment of the government price.

Q. Yes; I see. Now, you stated that one man would open up on a general proposition; he would make about ten cuts or prospects in a day, or something of that sort?—A. About, yes; yes, it is about that.

Q. Would they make any more than that at a time?—A. Well, that would depend on what they had. There were other places where they worked probably a day or two and not get any results there at all.

Q. I see; but as I understand, as a general rule, if the coal was exposed they would make on an average of about ten cuts a day?—A. Well, no; I would not say an average of ten a day. That would depend altogether upon the conditions which surrounded them. Probably they might work several days and not get any results.

Q. Yes; I see. But just on an average how many would a man be able to make in a day, everything, taking through the whole season?—A. Well, that I could not say. Very often they might make as many as ten a day—

Mr. HUGHES. Do you mean one man of the crew?—A. One man; and then again there would be a number of days before they would get the coal open.

Q. While they were searching around for an exposure?—A. Yes; all the work was prospecting work. You could not tell by looking at the ground how deep you would have to go to get the dip; there were many places that we opened and we had to abandon because it sloughed in on us, and came in so fast we could not get it out.

Q. Precipitous; very severe incline?—A. Yes; and sliding in from the wet, all slushy and mushy.

Q. Your instructions, as I understand, were to prospect this entire area and ascertain what the character of the coal was in each instance? That was really your idea in carrying forward all this prospecting work?—A. Yes; that was my idea.

Q. What did you say about what Mr. James McGrath's work was up there?—A. When Mr. McGrath first came up there in April, 1905, I put him to work as a miner in these tunnels, in the neighborhood of the house. In fact, I think he worked in two or three of those openings. Then later on, when Hubbell came up with his crew, I put him on the survey and he worked throughout.

Q. On the survey?—A. On the survey; yes.

Q. What kind of work did he have to do on that?—A. I rather think that he was one of the chain men. I would not be positive, but I rather think he was.

Q. Yes; I think the original entry papers already in evidence will show the capacity in which Mr. McGrath did a great deal of his work—

Mr. GRAY. Which would be the best evidence.

The WITNESS. Yes; I would not be positive—

Mr. HUGHES. I did not suppose it was very material.

Mr. SHERIDAN. No; we will make it very plain and material before we get through with it.

Mr. HUGHES. I think you misunderstand me. What I mean is if he helped do the work I do not think it is very material whether he carried a chain or operated a transit or was an ax man, or a man who handled a transit. It seems to me a man can see as much whether he carries an ax, chain, or transit.

Mr. SHERIDAN. Well, I do not agree with that, but we will not discuss it.

Q. You stated in your direct examination that the prospecting for coal, or that most of the prospecting carried on by you, Mr. Chezum, was from the south line of the group up to the north line of the group.—A. Yes, sir.

Q. And when you made the remark, I believe counsel was calling your attention to Claimant's Exhibit No. 1 for the purpose of identifying the area?—A. Yes.

Q. How did you know you were off the group as far as the south or north line of this group? Did you survey it?—A. That is just what I started in to explain.

Q. Well, explain it.—A. Some time ago when they started in with that location survey, they commenced a quarter of a mile south than the line is at the present time. And from our investigation there that line was moved up to conform with the outcrops of coal.

Q. That survey was the survey already described by you as made by Mr. Hubbell?—A. Yes.

Q. Now, Mr. Chezum, in regard to this large tunnel you have described, that is marked on Claimant's Exhibit No. 1, as the Tenino claim, that tunnel, which you said was in between 300 and 400 feet in a southwesterly direction, what was the purpose of that tunnel?—A. I beg your pardon; tunnel No. 1 that you have marked here is not within 400 feet of the house. Tunnel No. 4 is the closest tunnel

to the house. Now, this tunnel No. 1, as I understand it, is the one about 1,500 feet down the creek from the house.

Q. Well, what I want to get at is, that is the largest tunnel as far as you know?—A. Yes; that is the largest tunnel we have in there.

Q. What is the purpose of that tunnel, the largest tunnel?—A. It was run for the purpose of ascertaining the extent of that coal vein, if it was regular, and the dip and the strike, as all the balance of our prospect work was done there.

Q. Could you mine coal through that tunnel, in your opinion?—A. I am not a coal miner, but I would not imagine you could from what I have read of coal mines. That is, you could not make a commercial proposition out of it. It is out of the question to handle it through a tunnel of that size.

Q. That is as far as you have knowledge of it?—A. That would be my theory. That is the opinion I have from what reading I have done and what I hear.

Q. Now, running in the direction this tunnel penetrates, this ground rises very suddenly to the west?—A. Yes; but it is going up. I do not think that is the longest tunnel. I think there is more feet of work done on tunnel No. 4, done from the portal of the tunnel than the others, but it is done. We got lost when we got in there, as I stated to you in the direct examination, and had to make a raise to locate our coal.

Q. About how far did you go in on this tunnel No. 4?—A. I think my first estimate was about 90 feet to pick up the coal vein as it showed up on the mountain running down toward the creek. We had a small tunnel up above and it was acting bad, did not look as though the coal was exactly in place, or as though there was some kind of movement. It was on a hogback.

Q. Oh, it just went in 90 feet, as I understand?

Mr. HUGHES. No; you did not understand it correctly; his estimate was 90 feet back to the vein.

A. Yes; and then I estimated from the character of the tunnel from my examination that we would be able to pick up the coal close to the creek.

Mr. SHERIDAN. Well, now, what I want to get at—

Mr. HUGHES. Let him answer the question.

Q. What I want to get at is this: How far in does this tunnel penetrate?—A. It goes in 115 feet straight, and then we struck a streak of black dirt, and we just followed that around in there until it was as crooked as a dog's hind leg up in here, and we must have extended that in there nearly 500 feet from the portal.

Q. That would bring you in on the adjoining claim?—A. Well, I don't know; I don't know how far.

Q. Well, about 500 feet in, anyhow, from the mouth?—A. Well, yes; I should judge; I don't know how far it is. And then we came back and we made an upraise; and it is a piece of work no miner would be proud of [laughing] because we got in there and got lost and had to send for a surveyor to get us out.

Q. Now, then, this is the longest tunnel? That is the point I want. This is the longest tunnel that you know of?—A. Well, I think there is some more real feet of work in from the portal of that tunnel than there is in the floor of the tunnel. Of course, I could not figure it, but

by looking at it so as to estimate it roughly, that is my idea; I would think it was.

Q. Was there any understanding between you and Mr. Cunningham or anybody else connected with these entries at the time that you were driving these tunnels that they would be ultimately used for mining coal off of any other than the Tenino entry or the adjoining entries?—A. No, sir; in fact, really that work was not done with a view of mining coal.

Q. It was just prospecting?—A. It was just prospecting.

Q. During all of this prospecting that you were doing did you have practically the same number of men at all times?—A. No; that varied. In the winter time we cut our force down.

Q. In the summer time you had a full crew prospecting?—A. In the summer time we worked all the way—well the first summer I was there I guess nearly forty men were at work in the different camps.

Q. I mean under you, Mr. Chezum?—A. Oh, under my own supervision, my crew ran from 17 to 23 men.

Q. Now, during the summer of 1903, how many men did you have of your own individual crew?—A. I had from 7 to 12 and 15 men.

Q. How about the summer of 1904 on that part you were working on?—A. Well, we had as many—we had quite a big crew there.

Q. Under yourself individually?—A. Yes. You see during 1904 I did a great deal of trail work, for the simple reason that it was almost impossible for these men to get through certain sections of that country they had to work in. I did this work so they could get on the trail and come to camp, and it would facilitate the work, and there was a great deal of trail work done there and carried out and connecting up with other trails that we had made prior to that time, but some of it would be, of course, more or less difficult.

Q. So the main work done in 1904 was trail work?—A. No, not the most of it; there was quite a little trail work done, though, in the summer. We had other work going on, but we had quite a crew of men in that summer.

Q. What year did you quit handling this prospect work on the Cunningham group? Was it some time in 1904, as I understand you?—A. No, it was in 1905. We practically—after that final survey was made—we practically dropped all prospect work.

Q. About July, 1905, did I understand you to say?—A. Yes, sir.

Mr. HUGHES. I want to say at this point that I did not go to any work done in 1905. It is not cross-examination, but I will not object if counsel wishes to go into it; but I reserve my right to cover the ground in my direct examination.

Mr. SHERIDAN. I believe that is objected to as improper cross-examination.

Mr. HUGHES. I say—I do not want any misunderstanding. I am not objecting to it, but I am announcing simply that I want to go into the matter on redirect examination if you go into it now.

Mr. SHERIDAN. Certainly.

Mr. HUGHES. It was a matter I didn't bring out.

Q. Now, just give us briefly what work was done or what the work consisted of in the summer of 1905, or that part of it you were in charge of. I mean your own work and your own crew.—A. Well, 1905, that final survey was made, and, as I told you, my time was

taken up in looking after camps and I did some trail work, and later on in the season we did some building.

Q. What kind of building?—A. Built a house.

Q. Like building a house for the purpose of working on the claim?—

A. Well, we finished that house along in December. We did not do any work after that.

Q. Where was that house located?—A. Over on Clear Creek.

Q. Over on Clear Creek?—A. Yes, sir.

Q. That is the house marked on claimants' Exhibit No. 1 as the Cunningham camp, isn't it?—A. Yes; that is it.

Q. At the time you were carrying on this prospect work did you keep any field notes of the work that you did and the location of it?—A. No, sir.

Q. So all that you are testifying to is your best recollection of the matter?—A. Yes; my best recollection.

Q. Now, you spoke of a Tokum formation, and you say when you got into it that you did not expect to find coal showings on the surface. How did you identify the Tokum formation?—A. I identified it from the experience I had with it in the fall, and my association with geological men who spent considerable time there for two summers. It is plain to find after a man is familiar with it, as it is for you, for instance, to look at a tree and know whether it is a green tree or a dead one. It is a sandstone formation that is dead and lifeless and has a metallic ring to it; while soft sandstone of coal beds, the coal beds are embedded up with, is a soft gray sandstone that disintegrates very easily and it looks like it was sappy and full of moisture.

Q. So you had no difficulty in identifying that formation?—A. No, not at all. After you got once familiar with it you would know it very readily.

Q. I now call your attention to plaintiff's Exhibit No. 1, and ask you if at any time during the prospect work that was carried on under your direction you were called upon to lay out a route for a tunnel on Clear Creek; and if so, in what direction it was to penetrate?

Mr. HUGHES. Objected to as not proper cross-examination and for the further reason, that if counsel desires or intends to use this witness as a witness in chief for the Government he had an opportunity to do so.

The COMMISSIONER. It might be well for counsel for claimants to understand that the Interior Department has adopted the English rule, and under that rule, this can be considered as cross-examination.

Mr. HUGHES. I do not understand that that is the English rule. Only matters incidental to or germane to matters brought out on direct examination constitute cross-examination, and more latitude is generally allowed in cross-examination; but under the strict rules of evidence it seems to me that the cross-examination must relate to matters brought out in direct examination. This is relating to matters which occurred long after the period that is referred to in the direct examination.

The COMMISSIONER. The English rule, as I understand it, as laid down in the text-books is that where a witness is called to a particular fact he becomes a witness for all purposes and may be fully cross-examined upon all matters material to the issue, the examination not being confined to the matters inquired about in direct examination. Answer the question.

(Question read by reporter.)

A. I was not called on to lay out any tunnels on Clear Creek.

Q. Do you know anything about a tunnel that had been planned on Clear Creek?—A. Yes.

Q. Tell us about it.

Mr. HUGHES. I object to that as manifestly calling for hearsay evidence, incompetent, irrelevant and immaterial, and not proper cross-examination.

Mr. SHERIDAN. I submit that the witness says he knows something about it.

The COMMISSIONER. I didn't understand the question. Will you kindly read the question?

Mr. HUGHES. This is to be taken in connection with the preceding question which the witness had answered previously, making it apparent that what he knows must necessarily be hearsay.

Mr. SHERIDAN. If that is it I have no objection.

Mr. HUGHES. Read it.

The COMMISSIONER. I have not heard the question. I would like to have it read.

(Question read by the stenographer.)

The COMMISSIONER. I think that is competent. He was asked about his own knowledge, if he knows.

Mr. HUGHES. I think the answer already given by the witness shows that the only knowledge he can have is what he obtained from others.

The COMMISSIONER. He can answer as to his personal knowledge. You can answer. That is, if it is from your own personal knowledge.

The WITNESS. Read the question.

(Question read.)

Mr. HUGHES. Your own personal knowledge?—A. The only knowledge that I had that in 1905, when Mr. Hawkins was there, and we went over and we were looking over the ground—

Mr. HUGHES. Is that knowledge what Hawkins or anyone else said to you?—A. Yes.

Q. Is that your own knowledge?—A. It is what Hawkins said.

Mr. HUGHES. I renew my objection.

Q. What we want is what you know personally of your own knowledge. Do you know personally of your own knowledge anything about such a tunnel?—A. No, not of my own personal knowledge.

Q. Anywhere on Clear Creek?—A. No; only what Hawkins said to me; just what was told me.

Mr. HUGHES. Well, we don't care for that.—A. Excuse me, I have knowledge of Clear Creek, but it is way up where we did tunnel work in 1903.

Q. I refer to the lower part of Clear Creek?—A. Oh no.

Q. Were you present on these claims when Mr. Hawkins made his examination of them?—A. Yes, sir.

Q. Did you assist him in his examination?—A. I was with him when he made the examination.

Q. What part did you take in that examination?—A. Well, I took the part of a guide.

Q. Of your own personal knowledge was Mr. McGrath with Mr. Hawkins on that examination?—A. No.

Q. Where was he, as far as you know, at this time?—A. Mr. McGrath was working for us in a different capacity—sort of an all-around man. He packed—done some packing; done some opening work, and in connection with Mr. Hawkins cross sections he made in the field, we had to do some work over in the field, and McGrath was employed as a general all-round man.

Q. You have a number of claims north of this group?—A. Yes, sir.

Q. How many are you representing there?—A. Eleven.

Q. This trail on the Cunningham groups leads off the Cunningham group and onto your claims?—A. Yes, sir; there is one trail that this last summer I connected up.

Q. That was during the summer of 1909?—A. Yes, sir.

Q. This present year?—A. Yes, sir.

Q. Prior to that time there was no connecting trail between the two claims?—A. No, sir.

Q. Do the waterways that run through the Cunningham claims in a northwesterly direction continue on into your claims?—A. In a northwesterly direction? No.

Q. Well, through any of the canyons or ravines?—A. I think some of the Clear Creek drainage touches onto our holdings. In fact, I think there is some drainage that runs into Clear Creek, but none of the drainage that goes into Canyon Creek touches—well, it might be about over here, it might be some of the—

Mr. HUGHES. When you say "over here," what do you mean?—A. Over on the northeast corner.

Q. The northeast corner of the group?

Mr. HUGHES. On the Cunningham group it will be northeast.

Mr. SHERIDAN. Yes.

Q. Now, are your claims at a greater or lesser elevation than that part of the Cunningham claims that they join?—A. Greater as a rule.

Q. Now, during all of the time that you were up on this Cunningham group, Mr. Chezum, and carrying on this prospect work, did you have any knowledge of an intention on the part of the entrymen interested in these claims to jointly operate these claims?

Mr. HUGHES. I object as to that as incompetent, irrelevant, and immaterial testimony, and calling for an opinion of the witness, and also as not being cross-examination.—A. I did not.

Q. Do you of your own personal knowledge know of any negotiation between the claimants about these entries, or any of them, and any Guggenheim interests for the purpose of transferring any interest or part of these claims?

Mr. HUGHES. Same objection.

The COMMISSIONER. Answer the question.

A. I do not.

The COMMISSIONER. Speak up a little louder, please.

A. I do not.

Q. Do you of your own knowledge know anything about the Bering Railroad which connects from Katalla with these claims?—

A. No, sir.

Q. Did you attend any meeting of the entrymen now concerned, concerning these claims?—A. I did not.

Mr. HUGHES. That is all.

The COMMISSIONER. Let me ask you a question.

By the COMMISSIONER:

Q. You say that Mr. McGrath worked under you in some respect in the development of these various coal veins. Do you know whether he had knowledge of all the openings you had made?—A. I do not think he could have; in fact, I am positive he could not have had any knowledge at all of them. The principal part of McGrath's knowledge would naturally be what was shown upon the trail or some of the routes that we went from one camp to another, for the simple reason that the majority of our coal openings generally, all over the field in the prospecting way, were all made before McGrath came on the work.

Q. Yet you said you left him in charge of the work?

Mr. HUGHES. No, he did not say that.

A. No, sir; I left him as watchman.

Q. I understood you to say that—

A. Left him as watchman.

Mr. HUGHES. Left a man by the name of Gray?

A. Gray is the man—

Q. That is all.

A. — that I left in 1904. Is that all?

The COMMISSIONER. No, they may want some redirect examination.

Redirect examination by Mr. HUGHES:

Q. In view of the rule as established by the commissioner as to the scope of this examination, I desire to ask this witness two or three questions that I would not have otherwise asked him. Mr. Chezum, prior to the commencement of this hearing, did you have any conversation with Mr. Sheridan?—A. Yes, sir.

Q. Did you inform him at his instance what—anything about your knowledge of the matter and the time when you worked there and the scope of the work done there?—A. I do not remember whether Mr. Sheridan asked me as to the time I worked there or not.

Q. But you talked with him?—A. I did.

Q. And answered the questions he asked you?—A. Yes, sir.

Q. I will ask you if he directed you to hold yourself in readiness to be a witness for the Government if he wished to call you?—A. No, sir; I do not think he made any—

Q. Did he ask you if you would be here or you could be reached if he wished you?—A. No, I do not think he did.

Q. When was his conversation with you with reference to this hearing, if you know?—A. It was a couple of weeks before the hearing started.

Q. Did he ask you, among other things, whether you were living in the city of Seattle?—A. I think so.

Mr. HUGHES. That is all.

Mr. SHERIDAN. Before you leave the stand might I ask the counsel the purpose of these questions?

Mr. HUGHES. I think that it is not necessary for me to answer this question, if the court please, unless for the purpose of enabling counsel to determine whether he wishes to cross-examine the witness. My object, I will say, however, to be courteous with counsel, is that in view of the rule laid down by the commissioner as the rule of the department, of which I had no previous knowledge, which of course

we must accept as the rule of the department for the purpose of this examination, is to show that counsel for the Government had an opportunity to examine this witness as to matters which were not cross-examination at the time and given him an opportunity to call him on behalf of the Government, and he did not do so at a time when he could not know by any possibility whether the witness would be produced by the claimants or defendants here and be given an opportunity for examination, which is beyond the American rule of cross-examination.

Mr. SHERIDAN. I wish to state in response to that, that the explanation does not seem to arise at any definite point. The questions seemed to my mind very peculiar and, except it was intended in the nature of some aspersion on counsel for the Government, I do not understand it, because there is no point to it.

Mr. HUGHES. If the commissioner please, I deprecate these unnecessary remarks, but I beg only to say that, if counsel does not discover the point it is only one of a great many points that escaped his attention.

Mr. SHERIDAN. I will confess that a great many of the points advanced by Mr. Hughes are so subtle that they are too subtle for human intelligence to follow under any condition.

Mr. HUGHES. The human intelligence that happens to be within that particular cranium.

The COMMISSIONER. Anything further with this witness?

Mr. SHERIDAN. If I may make one remark. Since Mr. Hughes has seen fit to touch a point under the English rule which would require the Hebrew rule to bring it in, I wish to state that I did have a conversation with Mr. Chezum and asked him if he were a resident of Seattle and when he expected to depart for Alaska, and he told me he was going to Alaska very shortly, and I told him what I thought his trip would be up there, and we bade each other farewell, and that is the last I knew of it. I did not think it would be proper to enter into any discussion of anything concerning this case with Mr. Chezum at that time. Knowing, however, from the records in my office that he had prospected this group, I felt it was a matter of professional ethics to leave him to be called by the other side.

The COMMISSIONER. Are there any further questions to be asked this witness by counsel? You are excused, Mr. Chezum.

(And it was thereupon stipulated by counsel, with the consent of the commissioner, that a recess be taken in this inquiry to Thursday, December 2, 1909, to the Federal Building, Spokane, Wash.)

DECEMBER 2, 1909—1.30 P. M.

INQUIRY RESUMED.

Appearances: Hon. William J. McGee, United States special commissioner; Mr. James M. Sheridan and Mr. William B. Pugh, counsel for the Government; Mr. E. C. Hughes and Mr. John P. Gray, counsel for the claimants.

Mr. SHERIDAN. Are you ready to proceed?

Mr. HUGHES. Yes; we are ready.

The COMMISSIONER. Very well.

MILES C. MOORE, a witness produced on behalf of the claimants, after being duly sworn, testified as follows:

Direct examination by Mr. GRAY:

Q. Governor Moore, will you state your full name, your residence, and occupation?—A. Miles C. Moore; occupation, banker, I suppose, or something of a farmer; my residence is Walla Walla, Wash.

Q. How long have you resided there?—A. Forty-six years.

Q. You are the same Miles C. Moore who is an applicant for patent for the Ludlow claim?—A. Yes, sir.

Q. And a defendant entryman?—A. Yes, sir.

Q. When did you first meet Mr. Clarence Cunningham?—A. I can't say definitely when I first met him. The first time I talked to him anywhere about this coal claim was early in the winter of 1903, about seven years ago.

Q. Where was that?—A. Why, at Walla Walla, as I remember it.

Q. I wish you would state the substance of that conversation, as you recall it?—A. Well, Mr. Cunningham stated that he had visited the Bering River coal fields, Controller Bay, that is, it is in this district, I believe, and that he had found a remarkable showing of coal there, of a very superior quality, and had samples, as I recall it. He asked me if I would like to have a location made for me in that district, and I replied that I knew very little about coal or coal-land laws, and after considerable talk about the various features of the country, I said that I had a friend in Seattle, a Mr. C. J. Smith, who had had considerable experience in mining and selling coal, and I would give him a note of introduction to him; that if he thought well of the proposition, I would be glad to let him locate a claim for me; and I also asked him in that conversation how he could acquire coal lands in Alaska and he said under the mineral-land laws, as he understood it.

Mr. HUGHES. Under what?—A. Under the mineral-land acts. That was the substance of the conversation at that time.

Q. Now, Governor, when did you determine to have a claim located for you?—A. Some time in February, I think it was, perhaps a month later.

Q. 1903?—A. Yes.

Q. Did you see Mr. Cunningham at that time?—A. Why, I am not quite certain. I think I did see Mr. Cunningham in Seattle. I should state further, my first conversation that—no—leave that out. After having given him the note to Mr. Smith, I wrote or talked to Mr. John Finch, I don't know which, in regard to Mr. Cunningham's standing, and he had known him in the Coeur d'Alene, and his reply was to this effect that he had been with him in a good many mining deals; none of them had been fortunate, but he had always found him straight, trustworthy, and reliable, and that influenced me in making up my mind to allow him to represent me as an agent in that district.

Q. When did you—when you did determine to have a claim located for you, did you make him any payment of any money?—A. Well, then, or very shortly after, some time in February, I made a payment of \$500.

Q. Do you know what that was made for, for what purpose?—A. That was made for the purpose of prospecting and exploration

and the establishment of camps, etc. I did not know very definitely what it was for.

Q. When did you next see Mr. Cunningham?—A. Well, I don't think I know definitely—probably some time in 1904.

Q. Did you have any conversations with him during 1904, Governor? [Handing witness paper.] I call your attention to a power of attorney which you executed some time in the year 1904? Had you seen Mr. Cunningham prior to executing that power of attorney?—A. During the year 1904?

Q. Yes.—A. Very likely, but I don't recall the date.

Q. Do you recall whether you received that power of attorney from Mr. Cunningham personally, or whether that was mailed to you at that time?—A. I think it was mailed to me.

Q. Referring to the power of attorney which is found in the application papers of Miles C. Moore, which was acknowledged on the 21st day of October, 1904, before W. D. Gregory, a notary public, I call your attention to an affidavit which was sworn to before the same notary public, W. D. Gregory, October 21, 1904, Governor, and for the purpose of laying the foundation of your cross-examination, Governor, if counsel for the Government so desires, I particularly call your attention to the following language contained therein: "I further swear that I am now in the actual possession of such coal lands through my agent as attorney in fact and make entry for my own use and benefit, and not directly or indirectly for the use or benefit of any other party." At the time that affidavit was made was that statement true, Governor?—A. It was.

Q. Had you at any time prior thereto had any contract or agreement, express or implied, with any association or corporation whatever, under or by the terms of which that coal claim or any part of it should inure to the benefit of such other person, association, or corporation?—A. I did not.

Q. Or any interests therein should inure to any other person, company, or association whatsoever?—A. No, sir.

Q. Had you prior to that time at any time had any agreement under and by the terms of which your coal claim when it should be patented, if at all, should be united, combined, or consolidated with any other coal claim belonging to any other person, or corporation, or consolidated with any other land for development or otherwise?—A. No, sir.

Q. I now call your attention, Governor, to the application for patent, sworn to on the 2d day of February, 1906, for T. J. Wagner—I think it is—Magner, a notary public, and particularly that part thereof which says, and through him, "I make the entry for my use and benefit, and not, directly or indirectly, for the use or for the benefit of any other party," referring to coal-land survey No. 60, and I ask you if that statement contained in the application for patent was true at the time it was made?—A. It was.

Q. Had you prior to that time, Governor, had any contract, express or implied, or any agreement or understanding with any person whereby any part of your coal claim should inure to their or its benefit upon your securing title?—A. I did not.

Q. Had you made any agreement, or did you have any understanding at or prior to that time, that that claim, when patented,

should be consolidated or united with any other claim of any other person, for mining or other purposes?—A. No, sir.

Q. Had you made any contract at that time, or did you have any understanding, which, in any way, limited your dominion over that claim?—A. I did not.

Q. Did you at the time that affidavit was sworn to have any agreement or contract with any person or persons whatever, that it should be turned over to a corporation, then formed or thereafter to be formed, or any part of it turned over to said corporation?—A. No, sir.

Q. Did you have any agreement or understanding that this claim should be—with any person or persons, or association that this claim or any part thereof, should be worked, opened or developed in unison with other claims, or other persons?—A. After patented, do you mean?

Q. Yes; or any other time. I mean at the time you swore to this application for patent, in 1906?—A. Well, I understood there was some money spent for that purpose; you do not refer to that exploration?

Q. No; I say any agreement by which it should be united or consolidated with other claims?—A. No, never; nothing of that kind.

Q. Governor, when was it that you paid for that claim to the Government of the United States?—A. Why, I think February, 1907.

Q. I hand you, herewith, the duplicate receiver's receipt.—A. I see that it is April 21.

Q. 1907?—A. Yes; the money was paid prior to that time; I think in February.

Q. How long prior to that time had you sent it to the register and receiver at Juneau, Alaska?—A. Oh, probably six weeks or two months.

Q. How was that money transferred from you, and how was it paid to the receiver?—A. I sent it to the National Bank of Commerce with instructions to transfer it to Juneau, Alaska, to the receiver of the United States land office there.

Q. And it was by them transmitted?—A. Yes; \$6 of it was afterwards returned to me by the receiver.

Q. Governor, at the time that this certificate of entry or certificate of purchase was issued to you on the 23d day of April, 1907, or at that date, or had you at that time, or prior thereto, had a contract or agreement or understanding, express or implied, with any person or association or corporation, under or by the terms of which your coal claim, or any part thereof, or interests therein should be held for the benefit or advantage of such other person or association or corporation?—A. I did not.

Q. Had you any agreement or understanding, express or implied, under or by which your coal claim or any part or interest therein should be combined or consolidated or united with other coal claims belonging to other people to be jointly operated or mined?—A. No, sir; never, prior to the issuance of final receipt.

Q. Had you had any contract or agreement prior to that time with any person by which any interest in that coal claim should inure to the benefit of such other person?—A. No, sir.

Q. Or had you any contract or agreement whatsoever that in any way limited your dominion over your coal claim at that time?—A. No, sir.

Q. Governor, subsequent to the receiving of this final certificate of purchase, did you meet with any other entrymen in that Bering River district, in connection with the proposed negotiations for the developing of yours and the adjoining claims?—A. Subsequent to this?

Q. Yes, subsequently?—A. Yes, I think that there was a meeting in May with some of the other entrymen which I attended.

Q. May of what year?—A. May of 1907.

Q. Was there any minutes or memorandum of that meeting kept?—A. Yes.

Q. Have you a copy of that?—A. (Witness produces paper.) That is it. [Handing paper to counsel.]

Q. You were present, you say, at that meeting?—A. Yes, sir.

Q. And this is a correct and true record of the proceedings that took place at that time?—A. Yes, to the best of my recollection, that contains them.

Q. Have you the original minutes of any such meeting?—A. No, sir; I have not the minutes.

Q. Do you know where they are?—A. I could not say who was the secretary, but I should think he would probably have the original minutes.

Q. Who was the secretary?—A. Why, Mr. Burbidge, if I remember right.

Q. The copy which you have though, is, as you recall it?—A. Yes, sir.

Q. That is a true and correct copy of the proceedings had at that time?—A. Yes, sir.

Q. And that is the copy which you have handed to me, of the meeting held on the 18th of May, 1907?—A. Yes, sir; that is right.

Mr. GRAY. We offer it now in evidence.

Mr. SHERIDAN. That exhibit is objected to on the grounds that it is not the best evidence and from what the witness said, we assume that the original is in the possession of some of the claimants.

Mr. GRAY. Do you know whether or not the original of this is in the possession of any of the defendants?—A. Why, I have doubt if there is any original. Copies were sent to each of the people present on that occasion, and I presume that is as near an original as anything is.

Mr. HUGHES. Permit me to suggest, Mr. Gray, that the secretary will be called later on—

Mr. GRAY. Yes.

Mr. HUGHES. And if he has an original he will produce it at that time and we will substitute it for this; and if he has not, we will have him determine or verify this.

The COMMISSIONER. It has been marked as an exhibit?

Mr. GRAY. It has been marked as "Claimants' Exhibit No. 3."

The COMMISSIONER. It may be admitted.

Claimants' Exhibit No. 3 admitted in evidence.

Q. Subsequent to the 15th of May when this meeting was held, was there any other meeting held at which you were present?—A. I do not recall any other at which I was present, no.

Q. Subsequent thereto, did you at any time visit the City of Salt Lake as a member of a committee for the purpose of representing various coal entrymen who had their final certificates of purchase?

Did you visit Salt Lake City and there have any conference with any person concerning your coal claims?—A. Yes, sir.

Q. If so, with whom?—A. I met Mr. Eccles, the representative of the American Smelting and Refining Company, or the Copper River and Northwestern Railroad Company, I don't know which capacity he appeared in there, and his attorney was also there, Judge Lindley, of San Francisco.

Q. With whom did you go to Salt Lake?—A. Mr. A. B. Campbell and Mr. Cunningham.

Q. Just state briefly what occurred at that time?—A. Mr. — we met Mr. Eccles and his attorney. I think Mr. Mark Rogers, an engineer or something, was with them but was not taking part in the consultation. Mr. Lindley said they were building railroads in Alaska, and that they needed coal and they understood our entries had passed to final certificates, and he thought perhaps we would like to make some arrangement to market this coal, as they needed it for their railroad and for their steamships, and they needed coke for their smelters, and they thought perhaps we were in the best condition to deal with them and wanted to know what kind of arrangement could be effected to get that coal to market. They were contemplating the building of a railroad in there at that time, and were looking for traffic for it as well, I suppose, but primarily they needed it for their steamships and their smelters, and for the market generally. They were spending considerable money in the development of Alaska and without coal they could not accomplish much. This was about the gist of what they stated to us; and after that matter had been talked over Judge Lindley framed up a sort of tentative proposition. I told him we had no authority to act for anyone except for ourselves, and he merely stated he understood that, without a power of attorney, we could not bind any of the entrymen who had attended this meeting; that the proposition was simply tentative to see if we could not get together on some kind of a proposition that would enable us to market coal, and enable them to buy some of it on some proper terms or perhaps proposed to buy an interest in the coal fields, and after some discussion the matter was signed up.

Q. I now hand you Government Exhibit No. 10 and ask you if that is a copy of the proposal which was signed by you and Mr. Campbell and Mr. Cunningham at Salt Lake? [Paper handed to witness].—

A. Yes, I think that is the same proposition.

Q. Who prepared that document?—A. Judge Lindley of San Francisco.

Q. The attorney for Mr. Eccles?—A. Yes, his attorney.

Q. You say you advised Mr. Lindley and Mr. Eccles at that time that you could not bind any other entrymen?—A. Yes, sir.

Q. Governor Moore, at the meeting which was held on the 15th of May, 1907, when a committee was appointed to take any necessary steps to complete the organization of a company for the transaction of business as the minutes show, what was done by this committee under and pursuant thereto? Was a company ever organized?—

A. No, sir.

Q. Was the matter carried any further than a mere—so far as you know—than a mere negotiation or looking towards the organization of a company?—A. Why, my recollection of the matter is that these

Guggenheim people, as they are known, concluded to change terminals from Katalla to Cordova.

Q. No, I am speaking now of the other meeting of May 15th, at which the committee was appointed of entrymen in that district to see what proposition they could get, and whether or not a corporation was incorporated or whether any such company was formed?—A. No, sir; no such company was ever formed.

Q. And it did not go any further? Was it ever formed?—A. No, sir; never materialized.

Q. Never materialized?—A. No, sir.

Q. Now, prior to this meeting of May 15, 1907, had there been any discussion or negotiation between you and any of the other entrymen concerning the consolidation of any of your claims with theirs, or any claims? Had there been any prior to that meeting?—A. I do not recall anything of that kind; no, sir.

Q. Had there been any negotiations by you, or as far as you can recall, by any others with the Guggenheim interests?—A. I did not know of any.

Q. The negotiations which were undertaken by you at Salt Lake, Governor, was there anything further done in connection with the matter?—A. No, sir.

Q. Under that agreement?—A. No, sir; that is as far as I ever got, as far as I recollect.

Q. It never materialized or was effected?—A. No, sir; it was not—it was not ratified by these people. There was very serious objection made to it by some of these people who attended this meeting of May 15, and no attempt made to complete it. I was about to explain that the Guggenheim people transferred their terminals from Katalla to Cordova, and as this was based on the haul from Katalla, it in effect abrogated the agreement, in our judgment.

Q. Nothing further was done under the agreement or under the proposal?—A. No, sir.

Q. Governor, I call your attention to Government Exhibit No. 25, being an affidavit made by you, known as the Glavis affidavit. [Handing witness affidavit.] Had you at any time prior to the time you executed that affidavit met Mr. L. R. Glavis; and, if so, where and under what circumstances?—A. I met him in the Ranier Grand—Ranier Hotel in Seattle.

Mr. HUGHES. The Ranier Grand?

A. The Ranier Grand; yes, that is right. I can not recall the date; probably in March.

Q. 1908?—A. 1908. He and Mr. Jones, I think, and Mr. Cunningham, I think, were sitting at a table in the parlor upstairs, and I went in there and I was introduced to this young man and we discussed various matters, and Mr. Glavis remarked that he had been going through Mr. Cunningham's ledger or book, I don't know just exactly which, and I said, well how did you find things? He said all right; everything seemed to be all right; I don't see why you should not have your patent very soon. I said how soon, and he said within sixty days. There was some talk about the thing being hung up in the papers on account of these Guggenheim negotiations, and these papers were for the purpose of offsetting and getting that clean up. His attitude was friendly and gave me the impression that he

was trying to help the entrymen try to clean up the matters so there would be no further delay. The time had gone on; I think it was nearly a year up to the time since final payment—final receipts were issued and we had not been able to get our patent.

Mr. HUGHES. Will you read the answer. I did not catch it.

(Answer read by the stenographer.)

Q. Subsequent to that time did you receive any communication from Mr. Glavis?—A. Yes, sir.

Q. And which contained therein an affidavit which he asked you to sign and return?—A. He said Mr. Cunningham had sent it to a number of the entrymen.

The COMMISSIONER. What is that exhibit?

Mr. GRAY. Exhibit No. 25.

Q. I now call your attention to Government Exhibit No. 25, an affidavit of yours, and I particularly call attention to the following language in that affidavit:

I am well acquainted with most of the other coal land entrymen for whom Clarence Cunningham is agent, and know of my own personal knowledge that the statements made in the foregoing affidavit are true—

referring to the affidavit of Cunningham—

in so far as they pertain to the Guggenheim syndicate and the understanding existing among ourselves as to the disposition of our claims. I know positively that the Guggenheims had nothing to do with our claims whatever, and were not considered or thought of in connection therewith until after the issuance of final receipts, and that the tentative negotiations begun at the meeting at Salt Lake City came to nothing. There has been a tacit understanding among the claimants represented by Clarence Cunningham that when title was perfected a company would be formed to develop the claims, but no written or specific agreement to do so was ever entered into, but these are so situated that one claim can not be profitably worked, as anyone familiar with coal mining appreciates.

Will you explain, Governor, what is meant by that language in your affidavit?—A. I had in mind at that time, the fact that the Guggenheim negotiations were what he was attempting to help us get rid of, and I had in mind the meeting of May 15 in which this matter was discussed and the understanding referred to that meeting, and the question of organizing and negotiating with—

Q. You mean the meeting of May 15, 1907, the minutes of which have already been produced?—A. Yes, sir.

Q. The minutes of the meeting you produced?—A. Yes, sir; then the further knowledge as stated in there that one claim can not be worked profitably, I might say I had knowledge that conditions and circumstances existing in that region would ultimately make it necessary for claims to be worked there together. That was the idea uppermost in the minds of those attending this meeting of May 15, and for the first time found expression there that I know of.

Q. Governor Moore, when you use the following language, "There has been a tacit understanding among the claimants represented by Clarence Cunningham, that when title was perfected a company would be formed to develop the claim," you referred to the understanding you say that you had on the 15th of May, 1907?—A. That was what was in my mind; yes.

Q. Did you intend to convey the impression that any such understanding had existed prior to the receipt by you of your final certificate of purchase?—A. Certainly it did not.

Q. Had any such understanding existed prior to that time?—A. It had not. That clause was added to correct any such apparent intention and the substituted agreement was my interlineation.

Q. And that refers to the meeting of May 15?—A. Yes, sir.

Q. Did you give careful attention and did you carefully examine the statements which were made in Mr. Cunningham's affidavit, Governor Moore?—A. Not very carefully. I am a busy man. I do not always take time to read documents that are placed on my table. My cashier asks me every few days to sign some prepared statement, release, or mortgage, or deed, or something like that. We do not always read those things as carefully as we should, and I intended to deny anything in the foregoing by substituting these words, "There had been no specific understanding—there had been nothing more than a tacit understanding, and that tacit understanding referred to the talk had at this meeting of May 15."

Mr. GRAY. You may take the witness.

Cross-examination by Mr. SHERIDAN:

Q. How old are you, Governor?—A. Sixty-four. I was much younger when this thing began.

Q. I understood you to say you were in the banking business?—A. Yes.

Q. Whereabouts, and how many years, approximately, have you been connected with the banking business?—A. Oh, I have been president of the Mercantile Bank about nine or ten years, and I have been a stockholder in the bank since 1888.

Q. Have you ever been engaged in any other sort of business, Governor?—A. Yes; I was a merchant in my young days, and I have handled farm lands and other things.

Q. Have you ever held public office, and if so, in what capacity?—A. I was at one time mayor of the city of Walla Walla, and I was the last governor of the Territory in 1889.

Mr. GRAY. The Territory of Washington?—A. The Territory of Washington.

Q. I understand you, Governor, you stated that you met Clarence Cunningham first, as near as you can recall, some time in 1903?—A. Yes; that is right.

Q. Do you recall exactly where it was that the interview with Mr. Cunningham occurred at this time?—A. My impression is that it was at Walla Walla.

Q. Was it in your office?—A. Yes, sir.

Q. In what way did Mr. Cunningham present himself to you?—A. Well, I had met Mr. Cunningham somewhere casually, I should imagine, a few years before that, but this question did not come up until January, 1903, and he simply stated that he had been north and visited the Bering River coal fields and found an immense deposit there and quite an attractive country and thought there would be possibilities there; and he wanted to know if I would like to have a claim located for me, or something to that effect.

Q. Did he bring any letter of introduction to you?—A. No, sir.

Q. Did he in any way account to you for his reasons for coming to you for this purpose?—A. I don't recall that he did. He may have done so.

Q. Can you recall when it was or where it was you met Clarence Cunningham prior to this time and in what connection?—A. The first time I talked with Clarence Cunningham was with reference to mining property he had in the Kootenai. Its name was the Central mine.

Q. That I understand was a couple of years before this?—A. I think so. I could not be accurate. It is such a long time ago.

Q. That was the only other meeting you ever had with Clarence Cunningham prior to 1903 as far as you can recall?—A. Yes, sir.

Q. Now, Mr. Cunningham informed you at this interview in 1903, as I understood you, Governor, that he had been to the coal fields in Alaska and produced some samples of coal from there. How lengthy a discussion did you have with Cunningham at this time?—A. I would not undertake to say. He went out to luncheon with me, and we talked about many other things.

Mr. GRAY. A little louder, Governor, if you please.—A. I say we talked of many things. I know some of his friends in the Kootenai, and we were talking about mining investments up there.

Q. Do you recall of whom it was he spoke at that time?—A. Of whom he spoke?

Q. Yes.—A. He spoke about Mr. Finch.

Q. Any others?—A. Mr. Campbell; that is about the only mutual acquaintances we had there; and possibly Mr. Sweeney. But I would not undertake to say. It is too long ago for me to make any accurate statement of any conversation.

Q. Those entrymen you have mentioned are three of the entrymen in the present group of entries we are inquiring into?—A. Yes, sir.

Q. Now, did Mr. Cunningham at that time go into the question with you of the feasibility of operating coal mines in Alaska?—A. I think I asked him how far they were, anyway, these coal deposits, and something about the nature of the harbor, either in that conversation or subsequent conversations; I would not undertake to say which.

Q. In what business were you engaged, Governor, at the time that you had this first conversation with Cunningham, in 1903?—A. Banking.

Q. Now, did you take up the details of the cost of operation of 160 acres of coal land in Alaska at that time before advancing him money for the purpose of prospecting the ground in Alaska?—A. I may have done so, I can not recall that part of the conversation.

Q. You can not recall that part?—A. No.

Q. You next saw Mr. Cunningham in 1904, as I understand you?—A. Yes.

Q. Now, where was that? And give us, as near as you can, the substance of what conversation you had with him at that time.—A. Probably in Seattle, as my business takes me to Seattle quite frequently, and Mr. Cunningham was living there and I presume that is where I met him, but I can not say positively as to that.

Q. Do you recollect whether on the latter occasion in 1904 you went to see Clarence Cunningham or he came to see you?—A. I probably met him at the Ranier Grand Hotel. That is where he had some stenographic work done in there, perhaps, and he may have received his mail there, as I understand it, and I met him there.

Q. Did you stay at that hotel yourself?—A. No, sir.

Q. So you went there for the purpose of seeing Mr. Cunningham at that time?—A. Probably.

Q. Did you on this occasion take up the matter of the feasibility of developing 160 acres of coal lands in Alaska?—A. I can not say that I ever took up the question.

Q. Do you recall taking up any other phases of this situation at that time with Mr. Cunningham?—A. We talked at various times about the harbor question and about what landing, what place this coal might be marketed. There had been some talk about terminals at Cordova, and I remember he said it would be very expensive to build across the Copper River delta, and while there was some difficulties at Katalla, the impression was that that was the best point at which to market the coal.

Q. Had you at that time considered the possible expense of constructing a railway from the coal claims to the coast?—A. I don't think so at that time.

Q. But you did refer to the idea just generally?—A. Yes.

Q. In what detail did you take up the question of harbor development at this time?

Mr. GRAY. What time?

Q. 1904.—A. There was a certain Pittsburg company—

Mr. HUGHES. I think, if you would try and face around this way, Governor Moore, and talk a little louder, because we can not hear what you say.—A. That is one of my infirmities. I will try and speak up.

Mr. HUGHES. You are facing the other way.—A. It is natural to face the party you are talking with.

Mr. HUGHES. Face toward the stenographer and so we can both hear?—A. Yes. There was a Pittsburg company that had spent some money, or preparing to, up there; it was the Martin Island Company, for terminals, and Mr. Cunningham discussed the feasibility of making a harbor behind those islands and, as I remember it, he thought that Kanak Island was the suitable point for coal bunkers at the mouth of Bering River. That was simply talk.

Q. There were no matters planned at that time?—A. No, sir.

Q. You were merely discussing the desirability of constructing a railroad from the claims down to the Kanak Island?

Mr. GRAY. Just a minute. I think that is rather going beyond what the Governor has already testified to. You are referring now to 1902?

Mr. SHERIDAN. 1904, subsequent conversations with Mr. Cunningham?—A. The railroad question had not come up at that time as I recall it, further than I asked him at one time, perhaps then, about the character of the country between the harbor and the mines.

Q. What did he say about the character of the country, Governor?—A. He said that Bering River was comparatively easy of construction, not much difficulty until they reached the mountains at one end and the harbor at the other. The principal difficulty was terminals, but that was gone into later and not particularly at this time.

Q. However, this general discussion, as I understand you, did occur at this time?—A. Very likely.

Q. And did you on the occasion of this second conversation with Mr. Cunningham, namely, 1904, discuss any other features of the

situation?—A. Talked about the government analysis of coal, if I remember right (it might have been a year later), about the superior quality of coal, as to its coking qualities and such things as that.

Q. Yes. Based upon what analysis did this discussion occur?—A. Why, the government geological report, as I recall it.

Q. Yes. Do you recall the number or the name of that particular report?—A. No, sir; I can not.

Q. You had it with you at that time?—A. The report?

Q. Yes.—A. I don't think so; no.

Q. Did Mr. Cunningham have it?—A. I don't think so, but he referred to it in the conversation, to my recollection.

Q. Now, then, give us, if you have not already, your reasons, in your own words, why you placed such confidence in Mr. Cunningham in the matter of coal mining. Had he, as far as you know, ever had any coal-mining experience?—A. I don't think he had. But he was a man of unusual intelligence, large experience in mining precious metals; and my talk with him had convinced me he was quite capable, and was energetic and indefatigable.

Q. Do I understand you to say in your direct examination that you had referred him to Mr. C. J. Smith; and, if so, for what purpose?—A. I said to him that I knew nothing about coal or coal mining, or coal-land laws; that I had a friend in Seattle who had had such experience in handling coal, and his judgment would be valuable, and that I would give him a note of introduction to Mr. Smith.

Q. Do you recall what you stated in that note?—A. Why, I can not recall the words. I remember telling him Mr. Cunningham had visited the Alaska coal fields and found some very desirable coal, and we wanted to—had discussed the question of locating a claim. Probably that was all that was said. If there was anything more I don't remember it.

Q. Do you know anything of the existence of that letter at this time?—A. I do not know whether Mr. Smith has it or not—I am not sure.

Q. Did you keep any copy of it as far as you can recall?—A. I do not know whether I have or not.

Q. Do you customarily keep copies of letters you write?—A. Yes, important letters I do. But not always letters of introduction. Mr. Smith testified, as I remember, that he received a card of introduction.

Mr. GRAY. Yes; go on, Governor.

Q. Is that right?—A. Yes, I think that is what Mr. Smith said.

Q. Did you at any time subsequent to this meeting with Mr. Cunningham in 1904 have any other meetings with him personally in this connection or any other connection?—A. Oh, I met Mr. Cunningham frequently after that.

Q. Where?—A. Seattle, chiefly.

Q. Elsewhere?—A. I think once or twice in Spokane. He was present at this meeting on May 15.

Q. Yes. On those occasions did you have any discussion with him concerning these claims?—A. Why, I naturally talked with him about the coal business.

Q. Now, about how many of these meetings were there in 1904? I mean at which you met Mr. Cunningham and talked over these matters.—A. Do you mean in company with other people or alone?

Q. Either way.—A. Probably half a dozen times.

Q. Yes.—A. But I could not give you the dates, nor what was said, further than we discussed it in a general way, the question of railroads, harbors, and the quality of coal, and the difficulties and expenses of operating in that country, and such things as men naturally would talk about.

Q. Yes. When, as near as you can recall, was the last meeting had of these, approximately, to which you have referred?—A. Probably in October, 1907.

Q. Did you furnish funds to Mr. Cunningham in connection with this investigation in Alaska along through this period, from 1903, when you first met him in this connection, down to 1907?—A. Yes, sir.

Q. About how frequently a year did he call on you for remittances, Governor?—A. Sometimes once and sometimes twice, and I think sometimes three times in a year; I could not say.

Q. In a year?—A. Yes; that is my recollection of it.

Q. Did you keep any account yourself of the money furnished Clarence Cunningham for this purpose?—A. Yes, sir.

Q. Have you those accounts with you now?—A. I have drafts drawn on me somewhere; I think in my files.

Q. You can produce them in court if necessary?—A. Yes; I think so.

Q. Are the minutes of the meeting you have produced here in this inquiry the only minutes of any meeting which you have in your possession?—A. I think they are; yes, sir.

Q. Are you sure of it?—A. I am sure of it.

Q. Do you know if minutes were kept of any other meetings than this for which you have furnished the minutes, at which meetings you were present?—A. Probably were, and I have seen copies of them.

Q. Did you at any time have copies of them?—A. Possibly.

Mr. GRAY. I will say, Mr. Sheridan, as soon as we get to it we will produce a witness who was present, and we will produce the minutes of the other meeting.

Mr. SHERIDAN. Of course I desire competent evidence.

Mr. GRAY. Governor Moore, I will say to you now, was not present, and that is the reason, perhaps, why he has not seen a copy; but I will at the proper time see that they are produced. I did not think it was proper when the governor was on, when he was not present, and the minutes show he was not present at this meeting.

Q. Governor, I now invite your attention to Exhibit 25 and especially that part thereof which is signed by you as a corroborative affidavit to the extent set out therein. [Handing witness paper.] I wish to ask you, since the affidavit signed by you in this exhibit is in a different colored ink from that of the affidavit of Clarence Cunningham, also a part of this exhibit, where it was that this affidavit was prepared, the one which you have signed?—A. Well, this in blue ink was written in my office.

Q. At whose dictation?—A. At my own. I ran my pencil through the objectionable parts of it and dictated the last clause.

Q. Yes.

Mr. HUGHES. And then had your typewriter copy the whole of it?—A. Didn't copy the whole of it; copied the latter part of it.

Q. So the part that appears in that exhibit in blue ink is the part dictated by you and copied in your office?—A. The last paragraph—

Mr. HUGHES. We object to that.

A. The last paragraph was dictated. The rest was copied. That is the way I remember it.

Q. Yes. Who copied it in your office?—A. Yes; by my typewriter.

Q. Now, Governor, I again ask your attention to your affidavit in this exhibit, and I will ask you to point out to us again the parts which do not represent your meaning.

Mr. GRAY. Well I think the question is somewhat unfair. I object to the form of the question. I think it should be inquired of the witness what he intended thereby and if there is anything therein that he did not intend to state, I don't think the form of the question is quite fair to him, Mr. Sheridan.

Mr. SHERIDAN. Read the question.

(Question read.)

Mr. HUGHES. You are specifying the last page, I believe?

Mr. SHERIDAN. Yes. The last page of the exhibit.

The COMMISSIONER. You may answer the question.

A. This affidavit recites that statements made in the foregoing affidavit are true in so far as they pertain to the Guggenheim syndicate and the understanding existing among ourselves as to the way we should operate our claims—that is a rather dubious proposition, and I sought to correct it by the final paragraph. There has been a tacit understanding among the claimants represented by Clarence Cunningham that when title was secured a company would be formed to develop the claims, but no written or specific agreement to do so was ever entered into. Now that was intended as a correction and the tacit understanding part refers to the matters uppermost in my mind that was the May meeting in 1907.

Q. I notice on this last page of this exhibit, viz, Government Exhibit 25, that there is this statement:

And the understanding existing among ourselves as to the disposition of our claims.

Was that your meaning and intention at that time, or have you anything to say concerning that statement?—A. That in so far as it pertained to the Guggenheim syndicate and the understanding existing among ourselves as to the disposition of our claims. That referred, as I supposed, to the disposition to the Guggenheims. That was uppermost in my mind; the Guggenheim matter had been a feature in all these affidavits and in my own as well; and that is what we were trying to get rid of.

Q. By whom did you say this affidavit was brought to you?—

A. It was sent by mail.

Q. By Mr. Glavis?—A. Yes, the letter was Mr. Glavis's, if I remember right.

Q. Do you recall how many days you had it in your possession?—

A. I do not.

Q. Did you, as near as you can recall, have it in your possession for two days or more? A. Possibly. I don't know. It may have laid on my desk. I am a busy man, as I explained to you, and we take up those things in the order of their importance.

Q. I notice a part of this exhibit—A. Probably not long, because we understood Mr. Glavis was trying to help us clean up matters so that we could get our patents. We had been waiting a long time.

Q. I notice that part of this exhibit is a letter signed by you, dated Walla Walla, Wash., April 25, 1908, wherein you state, among other things, "Enclosed please find affidavit pertaining to my Alaska coal-land entry, which it is hoped you will find in order. I will ask you to state if, at the time you signed this affidavit, you had any misgivings as to the accuracy of the statements appearing above your signature, why you did not call some attention to it in this letter?"

Mr. GRAY. I object. Wait a minute. That question is unfair. I object to the form of it. The governor has explained that he set out in his affidavit as he believed and as he understood, what the facts were, and in his own way.

Mr. SHERIDAN. I am seeking for his further explanation of his intentions.

Mr. GRAY. Don't say he had any misgivings—the affidavit as was claimed by him—

A. I think I can satisfy you as to that point. I had received the impression in this conversation I referred to in the Ranier Grand Hotel that Mr. Glavis was friendly to the claimants and was assisting as far as possible in cleaning up any obstacles in the way of clear listing them for patent, and I was trying to come as near complying with his wishes as we could conscientiously do, and I added these qualifying sentences because I did not quite like the statement that he prepared for me, not suspecting there was any trap in them, but anxious to please him as far as possible.

Q. Did you or did you not read the Clarence Cunningham affidavit, which is a part of this exhibit, before you signed your affidavit?—A. I probably did, carelessly, as some of my friends did also, I suppose. But I sought to correct it with the last paragraph. I insisted upon that.

Q. About how much altogether, as near as you can recall, Governor, did you spend on this claim through Mr. Cunningham, just roughly.—A. Oh, approximately—

Mr. GRAY. Prior to what time?

Mr. SHERIDAN. Oh, take it altogether.

Mr. GRAY. Well, I object to the question as taking in too much time.

Mr. HUGHES. You have already asked some of the witnesses the amount expended prior to the time of purchase. Do you intend by this witness to ask not only for that but for the amount expended down to this time also?

Mr. SHERIDAN. Oh, down to the entry payment.

A. Approximately \$4,000 as I remember it, but including the entry fee which was not sent to Mr. Cunningham, but sent directly to the land office.

Q. In what way did you compensate Mr. Cunningham for his service?—A. Why, he received a salary of \$200 a month; that is my understanding.

Q. From whom?—A. From myself and the other parties for whom he was conducting the explorations.

Q. So you all contributed to the payment of the salary of \$200 a month to Mr. Cunningham while he was carrying on this work?—A. That is my understanding; that is a part of the exploration fund.

Q. I now invite your attention to Government Exhibit 3, in which is found, among other things, what purports to be a copy of a journal kept by Clarence Cunningham, and bearing dates from February 1, 1903, and down to and including some time in 1907, wherein is set out expenditures, explanations thereof, in connection with the claims now under investigation. I especially invite your attention, Governor, to the statement on page 1 of the copy of the journal in this exhibit, which states among other things—

After this is done each subscriber agrees to deed his interest to a company to be formed for the purpose of developing and marketing said coal, and receive stock in such company in payment for same.

Have you anything to say concerning that statement?

Mr. GRAY. We object.

Q. With reference to its accuracy?

Mr. GRAY. We object on the ground it is incompetent and immaterial, and no foundation has been laid for asking that question of this witness.

The COMMISSIONER. I think it is proper cross-examination. He can say whether it is true or false, as far as he knows personally.

Mr. GRAY. I desire to reserve an exception.

Mr. HUGHES. The inquiry is propounded and he is interrogated upon a document with which this witness has nothing to do, and the question can only be propounded as an abstract question upon the hypothesis that this document was drawn by the witness.

Mr. GRAY. What this witness has to say concerning it is entirely immaterial.

The COMMISSIONER. He can say whether it is true or false as far as he knows.

Mr. GRAY. It would be proper for him to ask if he had any such agreement or arrangement himself.

The COMMISSIONER. He may answer.

Mr. SHERIDAN. Mr. Commissioner, I object to the explanation from counsel which will point out to the witness what his answer should be.

Mr. HUGHES. We have not made any such statement as that, Mr. Commissioner.

The COMMISSIONER. I don't think, Mr. Sheridan, that the objection indicated any such purpose. I think it is proper. They may make it, and I think it is proper for the witness to answer the question whether the statement is true or false.

(Question read.)

A. I have no knowledge of any such arrangement as that. I never heard of this until Mr. Glavis returned that journal to Mr. Smith.

Q. Reading further from the same page of the journal:

And it is further agreed that each subscriber shall have one-eighth of his stock issued to Clarence Cunningham in consideration of his services in securing said land.

What have you to say concerning that?

Mr. GRAY. Same objection.

A. I have no recollection of anything of that kind.

Q. Did you ever make any agreement with Clarence Cunningham to give him a one-eighth interest in your claim in return for his services?—A. No, sir; I never did.

The COMMISSIONER. What was your answer?—A. No.

Q. Have you ever seen what has been referred to in this inquiry as the original journal kept by Clarence Cunningham?—A. I think I saw it after it was returned to Mr. Smith by Mr. Glavis. That is the first knowledge I ever knew there was any such book in existence.

Q. That is the first you knew of it?—A. Yes, sir.

Q. Did you at that time look it over carefully?—A. Not very.

Q. I ask you now to scan that part of this exhibit which purports to be a copy of such journal and ask you if you have any reason to believe that is not an accurate copy thereof as far as you can recall?—

A. Might I—

Mr. GRAY. I object to that. Wait a minute. It is incompetent, and not proper cross-examination, in the first place. It is incompetent, and no foundation has been laid for asking that question of this witness. That is not the way to prove it.

The COMMISSIONER. I believe he said—

Mr. GRAY. It calls for the conclusion and opinion of the witness as to whether or not this is in the same—

The COMMISSIONER. I believe he answered he had looked over the journal after it was returned by Mr. Glavis.

Mr. GRAY. Yes, and Mr. Sheridan asked him if he had any reason to believe it is incorrect—asking for an opinion.

The COMMISSIONER. He can state his recollection of its appearance in looking over the original, whether it appears from his recollection it is the same.

A. I am not competent to testify on that. I remember in a general way that Mr. Cunningham said there was a journal. I understood it from him, but that is the first I heard of it. I can not say whether this is a correct copy or not. I can not say. Cunningham's testimony would be the best evidence on that. That was not signed by me—that memorandum.

Q. What memorandum do you refer to?—A. In the journal.

Q. The one which I have just quoted from the journal to you?—A. Yes. And I perhaps should state in this connection that Mr. Cunningham, when he first came to me and spoke or having talked with some of his friends in the Coeur d'Alene about going north—I don't think I was the first person approached with regard to this matter. I don't remember just what the conversation was, but there are others, but I did not know any of their names.

Q. Now, with reference to Government Exhibit 10, viz, this Gugenheim memorandum or option, as I understand you, in your direct testimony, this option was signed?—A. Yes, sir.

Q. By whom?—A. By myself and Mr. Campbell and Mr. Cunningham.

Q. When you went down to Salt Lake City for the purpose of this conference, did you have any authorization from the other entrymen in this group to represent them at this meeting?—A. Simply the resolution passed, I think, appointing the committee.

Q. How many entrymen were present at this meeting at which time this resolution was passed?

Mr. HUGHES. Pardon me, for the information of Mr. Sheridan, the witness has already stated that he was not present at that meeting. We will produce a record of that meeting by the person who was secretary of that meeting in which you will get all this informa-

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and the governor could not give it to you if you pursue this inquiry, and I say frankly we will give you full opportunity to get at the facts and truth of it.

Q. Well, Governor, was it your understanding that you were authorized when you did go to Salt Lake City to represent all these entries?—A. That was present at that meeting in May?

Q. All of the 33?—A. No, sir.

Q. How many did you understand that you did represent?—A. I understand we represented those at the meeting, but without any power to bind them, to simply frame up some tentative proposition.

Q. And submit it to them subsequently?—A. Yes, submit it to them afterwards.

Q. Did you—now, had you any official information, or any record information, in the nature of a letter, a communication or report, from this meeting, showing how many had been present?—A. No, sir; I can not say.

Q. Before you went there?—A. I can not say. The information I had was probably derived from Mr. Campbell and Mr. Cunningham.

Q. Was it your understanding in the discussion that was had at this meeting that fifty per cent of the stock which was to be issued to this group of 33 entymen was to go to the Guggenheims in case this road was built in there at the time?

Mr. GRAY. I object.

Mr. HUGHES. I object. Immediately, or still later?

Mr. SHERIDAN. Yes.

Mr. HUGHES. Now make the objection.

Mr. GRAY. I object upon the ground that it is not the best evidence. When a conference results in a written agreement or instrument, that instrument or agreement is the best evidence of what is agreed upon, and what negotiations, if any, were had, and what proposal, if any, was made.

Mr. SHERIDAN. Well, Governor Moore has been called upon the stand to state what he meant by affidavits which he signed which say something different from what you say he meant, and I want the same thing with reference to this—

Mr. GRAY. I do not think your statement is quite fair in the light of Governor Moore's testimony.

Mr. SHERIDAN. Let him testify.

The COMMISSIONER. Read the question.

(Question read.)

Mr. GRAY. I object upon the ground that where it had been incorporated into a written proposal that that is the best evidence.

The COMMISSIONER. Take the answer.

A. This memorandum contains the agreement and states it more clearly than I could from memory.

Q. So that you had no objection to the way that proposition is stated in that memorandum?

Mr. GRAY. Well, I object—

A. If that is the record, I do not see why I should object to it.

Q. Is it the record, as near as you can recall it?—A. That is my recollection.

Q. I now hand you Government Exhibit 29, and ask you to state what it is, and what you know concerning it.—A. Those are articles of incorporation of the Bering River Railroad Company; the purposes are set forth here in the papers.

Q. The purpose is set forth in them?

Mr. GRAY. A little louder.

A. The purposes are set forth in the articles of incorporation.

Q. Is this statement as to the purposes for which this railroad was incorporated the same that you had in mind in 1904 when you discussed the possibility of building a railroad with Clarence Cunningham?—A. Possibly. I could not qualify on that. I suppose my understanding was that the road would run up Bering River, and I think that provides for a line up Bering River.

Q. Yes?—A. But that was entirely an informal talk before that. I did not enter into any agreement or any understanding.

Q. Other than these articles of incorporation?—A. Well, that preliminary talk did not have this in contemplation.

Q. Have you ever seen this Clarence Cunningham affidavit which is found in Government Exhibit No. 25 before it was mailed to you by Mr. Glavis for your consideration?—A. No, sir.

Q. Do you know anything about its preparation?—A. I think not. No, I didn't see it.

Q. Did you, Governor, at any time after 1903, when you first took up this matter of the coal claims of yours with Clarence Cunningham, subsequently, down to and including the date of receipt of final certificate, consult any attorneys concerning your coal claims; and if so, whom?—A. The only occasion on which I consulted an attorney was when the question first came up. I asked some local attorneys, probably Gose & Gose, what the nature of the coal-land laws in Alaska were, and they had very little information on the subject.

Q. In what year was that?—A. Probably 1903. I would not say; it might have been in 1904.

Q. When you say local attorneys, do you mean here in Spokane?—A. No, at Walla Walla.

Q. What was their name?—A. Gose.

Q. G-h-o-s-t?—A. No, G-o-s-e. That is my recollection, and they said they had nothing very explicit bearing upon it; they did not keep posted upon the matter, and it was out of their line practically, and had no knowledge.

Q. Did you subsequently, and at any time prior to the issuance or final receipt for your coal claim, consult any other attorneys in this connection?—A. You mean subsequent to final receipt?

Q. Any time, up to and including the time of the final receipt?—A. No; I don't recall anything of that sort.

Q. Did you subsequently to that final receipt consult any attorneys; and in asking that question I do not mean present counsel, of course.

Mr. GRAY. Well, we desire to enter a formal objection upon the ground it is immaterial, irrelevant; it was subsequent to the final purchase.

The COMMISSIONER. Read the question.

(Question read.)

Mr. GRAY. It seems to me that is obviously irrelevant.

The COMMISSIONER. You may take the answer.

A. I talked to Judge Ballinger once regarding it, but I can not say it was a consultation.

Q. What was the nature of that conversation and when did it occur, as near as you can recall?

Mr. GRAY. I object to that as immaterial, irrelevant, and absolutely incompetent, and absolutely and obviously irrelevant. It occurred at a time subsequent to the vesting, even under the Government's theory, of all of the rights of these entrymen.

The COMMISSIONER. If counsel will step to the commissioner's desk a moment.

(Counsel gathered around commissioner's desk.)

The COMMISSIONER. Read the question.

(Question read.)

The COMMISSIONER. You may answer.

A. It was after he retired from the position of land commissioner, probably during the year 1908 sometime. It was not a consultation. It was a talk, a discussion. I had not retained him as an attorney.

Q. You had not retained him?—A. No.

Q. Now, briefly, just briefly, just as closely as you can recall it, what was the gist of the conversation you had concerning these claims, if anything.

Mr. HUGHES. Same objection is made as heretofore.

A. Well, as I recall it, he said Mr. Glavis had called his attention to the Portland Coal and Coke Company's cases, and claimed that this case of ours came within the scope of that decision—that they were applicable to it. I replied that it did not seem to me they were at all identical, that that had been an incorporated company—

Mr. GRAY. Now—well, I thought—A. I thought—

Mr. GRAY. I object to further going into any such talk; I think it is improper.

The COMMISSIONER. I do not see the materiality of it, if it is a conversation which occurred long after final receipts were issued.

Mr. GRAY. I also object on the same grounds that I made my objection before. It was more than a year.

Mr. SHERIDAN. Yes, that is true; but I desire to have the question answered. Inasmuch as the Governor said he had such conversation, I want to know it all.

Mr. GRAY. If your honor please, he may just as well properly ask what conversation he had with Mr. Hughes or myself, and it would be just as relevant to this hearing and just as material.

Mr. SHERIDAN. I submit, if the commissioner please, that the witness be allowed to complete the answer which he began.

The COMMISSIONER. Very well, he may answer this question.

(Question read.)

A. And he said it was true, and there was that difference. That is all the conversation that I can recall regarding it. I would like to make it clear I was not consulting him as an attorney. Just had talked it over as a matter of common interest in the community is all.

Q. Was that all the conversation you had with him at any time concerning these claims?—A. As an attorney?

Q. Yes.—A. Yes.

Q. Did you have any other conversation with him concerning these claims?—A. I talked with him while he was Commissioner of the General Land Office.

Q. In Washington?—A. Yes.

Q. Give just as near as you can what occurred then.

Mr. GRAY. I object.

The COMMISSIONER. I can not conceive the materiality of that testimony, why that has any bearing on this question. This, as I understand it, is long since—over a year—since the issuance of final certificates.

Mr. GRAY. Yes.

Mr. SHERIDAN. Well, if the commissioner has the authority to call it irrelevant, I have nothing to do but submit to it.

Mr. GRAY. I object on the ground that it is obviously irrelevant.

The COMMISSIONER. I will sustain the objection on that ground.

Mr. GRAY. Now, just a moment. If the commissioner please, after a consultation with my associates, and because of conditions over which we have no control, and with which we have absolutely no connection, and in view of the fact that the name of the present Secretary of the Interior has been brought into this by counsel for the Government, we ask to withdraw the objection and let the governor state all the conversation he had in view of the fact with the objection and his failure to so state might be misconstrued, and might, while it has in our judgment no connection with this hearing, or the objects of the hearing, in justice to the Secretary of the Interior probably, and to Governor Moore, the answer should be permitted to be gone into now that counsel for the Government has sought to do so. We withdraw our objection.

The COMMISSIONER. I have sustained the objection upon the ground that it is obviously irrelevant to this hearing; but in view of the fact that the attorneys for the claimants have withdrawn their objection, why I will permit the answer.

Mr. HUGHES. We desire to express it this way, that we feel on reflection, that we can not, in justice to the Secretary of the Interior and the witness, have the testimony rejected here at our instance. We deem the testimony entirely irrelevant and immaterial upon any possible theory of this case, but we can not, in justice to the Secretary of the Interior and the witness, have it appear that we are interposing an objection, lest the inference be drawn that we fear the result of the testimony, and we have no such fear.

The COMMISSIONER. He may answer the question. The objection being withdrawn, he may answer the question.

(Question read by the reporter.)

Mr. SHERIDAN. Give us, as near as you can, what occurred then.—

A. I called on the Commissioner of the General Land Office, Mr. Ballinger, in January, 1908—early in January, 1908, as I understand it—

Mr. HUGHES. Will you kindly face this way? That is something we have not thought of, and I am interested in hearing what you say.—

A. I say I called on the Commissioner of the General Land Office, Mr. Ballinger, early in January, 1908, and I told him that myself and other entrymen represented by Mr. Cunningham were anxious to secure patents to the coal lands so that development work might be begun; that they had been lying there since April without attention.

Mr. HUGHES. What had been?—A. The filings, and applications for patent.

Mr. HUGHES. It will be a year?—A. Well, it was between April and January. And would like to know if there was objection to them, and if there was objection, what that objection was. If the papers were not complete we wanted an opportunity to complete them, and

he directed his chief clerk to look into the matter and report back to him the condition.

Mr. HUGHES. Directed?—A. Yes; I called the next day, as I remember it, and he stated to me that the land office at Juneau had reported that certain plats were so weather-beaten—the plats originally posted on the claims were so weather-beaten—that they were not acceptable to that office, and duplicates would have to be made. Mr. Ballinger said if you are willing to pay for these duplicates he would order these copies made; that when those arrived he saw no reason why the patents should not be issued. I went over to New York, and a week later, or two weeks later, came back to Washington and saw Mr. Ballinger again, and I told him I was going west, and would like to know the exact condition those claims were in, and he directed his clerks to go over them again, and note particularly what was required to perfect those entries. There were a few instances in which the receiver had neglected to sign some certificate, as I recall it, or one or two things in which the acknowledgment, I think, or something, had not been sworn to properly, and he then said those matters would have to be corrected; that if I had no other business in Washington, it was not worth while to remain there. Patents would be coming along just as soon as these informalities were straightened out. They had been approved for patent, clear listed, money paid, and final certificates issued, and it was his judgment that we were entitled to these patents.

Q. And that was when, as near as you can recall?—A. That is practically all the conversation.

Q. When, I mean.—A. Oh, this was in probably the latter part of January, 1908.

Q. Did you hear anything subsequently as to any change regarding the status of the cases?

Mr. GRAY. Now, just a minute. Oh, all right, go ahead.—A. Why, I heard—I got a telegram from Mr. Ballinger stating that the patents were temporarily delayed.

Q. Anything else?—A. That is all I heard from Mr. Ballinger.

Q. All the connection you had with Mr. Ballinger in connection with this matter of these entries?—A. Yes, sir.

Q. And that is all the conferences of any kind that you had with him as far as you can recall?—A. Yes, as commissioner.

Q. And as also described by you when he was not Commissioner of the General Land Office after he had retired?—A. Yes, sir.

Q. Governor, on the occasion of these different conversations with Mr. Ballinger while Commissioner of the General Land Office did you receive from him, or anybody else in the General Land Office, copies of all the papers in these cases?—A. No, sir; I did not.

Q. Did you ever tell anybody that you did?—A. I don't think so.

Mr. HUGHES. Objected to as immaterial. A question of that kind should be specific. A question of that kind is not proper cross-examination, and the only purpose is impeachment, and it should be specific.

The COMMISSIONER. Read the question.

Mr. HUGHES. We will withdraw the objection.

(Stenographer read the question.)

A. No.

Q. What is your answer?—A. No. If I am allowed to, I might offer some explanation that would help clear things up a little.

Q. Very well, sir.—A. They did write to me the letter from the General Land Office about the maps concerning which I have testified being mutilated and they would have to be replaced.

Q. Yes.—A. And this all probably grew out of that.

Mr. GRAY. Mr. Sheridan, while you are on that matter I would like to ask him a question.

Did you receive any reports of any special agent of the Government, Governor, or copies of any reports of any special agent of the Government in connection with any of these claims?—A. No, sir.

Mr. GRAY. At this time or any other time?—A. No, sir.

Mr. GRAY. From any office of the Interior Department?—A. Not that I know of.

Q. Or from anyone else?—A. I have no recollection of any such thing.

Mr. GRAY. If you had received any such report you would recollect it?—A. Yes; I should have regarded myself as very highly favored. [Laughing.]

Mr. SHERIDAN. I again invite your attention to Government Exhibit 29, which consists of the articles of incorporation of the Behring River Railroad Company, and I wish to ask you how many of the entrymen in what is known as the Cunningham group were interested in any way in that railroad?—A. I am not qualified to answer that question, Mr. Sheridan. My general idea was that this was a part of the exploration. The effort to protect the interests of myself and these people who joined with me in this incorporation, realizing that a railroad would be necessary to market coal up there, regarding it as a proper precaution to have a way down to the Bering River.

Q. Were any meetings held prior to the incorporation of this railway—

Mr. HUGHES. Do you mean at which he was present?

Q. At which he was present, yes.—A. I do not recall any.

Q. You do not recall any?—A. No.

Q. Do you, of your own personal knowledge, know if the other entrymen were to have an interest in this railway—all of the thirty-three?—A. I do not. They might.

Q. Governor, I now hand you Government Exhibit No. 5 and ask you to state if you ever received from anybody such a statement as is set out in this exhibit?—A. I could not say that I did or that I did not. I have no recollection of it.

Q. I now hand you Government Exhibit No. 6, and I will ask you to state if you, at any time since you became interested in these claims, received such a statement as is set out in this exhibit?

Mr. GRAY. I do not think the question is quite fair. I have no doubt you didn't intend it as it sounds. You say, "Since you have been interested in these claims."

Mr. SHERIDAN. Well, I will correct it to the extent, of in his claim, his coal claim in Alaska.

Mr. GRAY. Yes. Well I did not intend to suggest you were trying to trap him, but you just overlooked the matter.

Q. Yes.

The WITNESS (interrupting). I probably saw this, but I don't recall it. I had knowledge of the fact that Mr. Hawkins had gone up to examine the coal field.

Q. I now hand you Exhibit No. 7, which is a report Mr. Hawkins made on this group of entries, and I will ask you if you ever received a copy of that report, and if so, from whom?—A. I read this report somewhere. I can't say who sent it or whether I received one, or whether I saw it in Spokane or elsewhere, but I have seen that report.

Q. I hand you Government Exhibit No. 8 and ask you to state whether you have ever received such a statement as set out in this exhibit, and if so, from whom?—A. I probably did. I could not testify specifically.

Q. I now hand you Government Exhibit No. 9 and ask you to state if you ever received such a statement.—A. The same answer.

Q. Governor, are you financially interested in any concern in which any of these entrymen are interested financially?—A. Yes, sir.

Q. State what those concerns are, if you please.—A. Why, I am interested in the Baker Boyer National Bank, in which W. W. Baker is a stockholder; in the Metropolitan National Bank of Seattle with Mr. Horace Henry; a stockholder in the National Bank of Commerce of Seattle, which is owned by Mr. Smith.

Q. How long have you been interested in these concerns, financially?—A. Twenty years in the Baker Boyder National Bank. The Metropolitan Bank was organized last February, as I recall it. The National Bank of Commerce I bought stock in about two or three years ago.

Q. Are those the only members of the entrymen now concerned in this inquiry with whom you are financially associated?—A. No, sir; there are others; my sons are stockholders in the Baker Boyer National Bank and Frank & Walter Moore.

Q. Any others?—A. That is all that I can recall at the present time. I think, however, I have ten shares in the Blalock Fruit Company, in which Mr. Finch and Mr. Campbell are interested.

Mr. HUGHES. What is the capital stock of the Blalock Fruit Company?—A. I can not tell you. I think it is 1,000 shares of \$100 each.

Mr. HUGHES. One thousand shares of \$100 each, do you think?—A. Yes, sir.

Mr. HUGHES. Have you any other interests in Alaska other than this coal claim now under investigation?—A. Nothing more; that has given me enough trouble already.

Q. Have you ever been in Alaska?—A. Yes, sir.

Q. When were you there?—A. I was at Ketchikan in about 1905, and I was in Katalla in 1908.

Q. State briefly what was the purpose of those visits.—A. The first one was a pleasure trip.

Mr. GRAY. Objected to as incompetent, irrelevant, and immaterial.

A. Well, both pleasure trips.

Mr. GRAY. The first one was not to the place or near where these claims are situated, or located, and the next one was long after the final purchase was made.

Mr. HUGHES. It is sometimes embarrassing to describe all the purposes of a pleasure trip.

Mr. GRAY. I do not object to going into the other matter for the reason I stated, but I think there ought to be some limitation.

The COMMISSIONER. I think he may answer the question.

A. To be exactly candid I suppose it was a combined pleasure trip and seeing the coal fields.

Q. That is the first trip in 1905?—A. No, the second trip in 1908.

Q. And the first trip? What was the object of it?—A. Pleasure trip, absolutely.

Q. Did you on that occasion make a visit to the coal claims?—

A. No, sir; Ketchikan is in southeastern Alaska.

Mr. GRAY. Ketchikan is 700 or 800 miles from them, from these claims.

Mr. SHERIDAN. Have you ever been on these claims?—A. Yes; I have been on some of them.

Q. When?—A. 1908.

Q. For what purpose?—A. To see the coal.

Q. To look at the coal?—A. Yes, sir.

Q. Could you give us any further particulars of that visit?

Mr. GRAY. Why, we object.

Mr. HUGHES. We want to press this objection at this time. It is obviously irrelevant. Any inquiries here pursued as to personal observations of an entryman long after his final entry was perfected by payment and final receipt issued, it would cover a very large scope of examination, and there would be no end to this hearing.

Mr. SHERIDAN. I submit, Mr. Commissioner, that anything which has occurred in or concerning these entries and these claims up to the time that patent issues, is relevant in an inquiry of this nature.

Mr. HUGHES. I do not think it is relevant if a man goes to look at his claim after he has purchased and paid for it.

Mr. SHERIDAN. I think the Governor can briefly state what it is without taking up very much time.

The COMMISSIONER. I think his answer to this question has some bearing upon this investigation. Answer the question.

A. Please read the question.

(Question read.)

A. I could give a great many—fishing trips—

Q. I mean, Governor, that related to this coal entry of yours?—A. Yes; I visited my coal claim.

Q. Did you meet any persons there?

Mr. GRAY. I object to the question as immaterial and irrelevant.

The COMMISSIONER. I think he can give a general statement of what he did on the coal claims. You can state what you did when you went on your coal claims.

A. I looked at the coal and went back to the camp.

Q. Did you, while there on this occasion, have any conversation with any persons concerning developments or working of the claims or the formation of a company or the building of a railway?

Mr. GRAY. I object, on the ground that it is obviously irrelevant. He might have had, and it would have been entirely legal.

The COMMISSIONER. I think it has a bearing on the investigation. He may answer the question.

A. We talked about a great many things on that trip. I would not undertake to enumerate them all, because it would fill a volume. We talked about the Bering glaciers and about the winter rains.

Q. I mean concerning the development of the claims only?—A. And the difficulty and expenses in operating the claims in that country and the harbor question was discussed, and all those things at considerable length.

Q. With whom?—A. Mr. Horace Henry.

Q. Who was with you on this occasion?—A. Yes, and Mr. Cunningham was also with us.

Q. Clarence Cunningham?—A. Yes, and we were storm bound for two days in Katalla and we had some opportunities of judging of the harbor and how difficult it would be to maintain a breakwater there, and then we mushed across the Copper River delta and went to Cordova and took a steamer and went home.

Q. You can not recall in any more detail the conversation that you had with reference to these things concerning railways, expenses, etc.?—A. Oh, no; nothing, only very general, as people would naturally talk about those cases.

Redirect examination by Mr. GRAY:

Q. On that exhibit, Government Exhibit No. 25, in order that the record may be clear, state whether or not you dictated all of the last page of that to which your name is signed.—A. My recollection is I dictated only the last paragraph. The rest is a copy.

Q. Did you dictate it or did you correct it in the original which had been handed you, or which had been mailed to you, by penciling those things?—A. The original, the first page here, is the Cunningham affidavit, and this is a copy of a portion of the Glavis affidavit. I think down to that last paragraph that is my own dictation.

Q. And I understand you, you took a pencil and scratched out these things you did not want to go in the other?—A. Yes, that is right.

Q. And rewrote this last paragraph?—A. That is my recollection.

Q. And your stenographer copied it as you had it corrected?—A. Yes, sir.

Q. Now, Governor, Mr. Sheridan has asked you why it was that you put confidence in Mr. Cunningham and put up money to have him locate for you a coal claim in Alaska without further consideration. I would ask you if, in your experience in this western country, you have ever put up money for prospectors or for them going out to locate claims or interested yourself in mining ventures in the same, or practically in the same, way. What are the facts about that, Governor?—A. Why, yes; I have frequently contributed to the expenses of prospectors, as most men who have lived in the West have done, and grubstaked other fellows, and I have got one in Alaska now who never reported back.

Q. It is not infrequent in your past experience to do exactly what you did in this case, living in this western country as you have for these many years?—A. I suppose I have done that a half dozen times probably.

Q. Governor Moore, after Mr. Ballinger retired from the Land Department, at any time subsequent to that did you call on and interview the then Commissioner of the General Land Office, or any other office of the Interior Department?—A. Yes, sir.

Q. What other officer?—A. Mr. Dennett, the Commissioner of the General Land Office.

Q. Anyone else?—A. Assistant Secretary Pierce.

Q. Did you call on them in the same manner that you called on Mr. Ballinger before?—A. Yes; that was in May of this year.

Q. That was in May, 1909?—A. Yes.

Q. What purpose did you call upon these gentlemen for?—A. I wanted to see what the prospects of getting my patent was.

Q. What information did you get?—A. Mr. Dennett said there had been some charges filed, as I remember it. He said we could have patents under the new law, or we could have a rehearing.

Q. Was he referring to yours?—A. And the other entrymen represented by Mr. Cunningham.

Q. He stated that you could have a patent under the acts of 1908?—A. Yes.

Q. Or have a rehearing, or a hearing to determine whether you could have a patent under the act of 1904?—A. I think it was the Assistant Secretary that said we could have a rehearing, but Mr. Dennett said we could have patents under the new law.

Q. What new law do you refer to?—A. The new law of 1908.

Q. What did you decide to do as far as you were concerned?—A. I decided to have a rehearing. I think I may say—Mr. Dennett—I said to Mr. Dennett if there has been fraud in these entries why should we have patents under any law, and he said there was no fraud or moral turpitude charged.

Mr. GRAY. I think that is all.

Mr. SHERIDAN. Just one more question.

Mr. GRAY. I desire to say I have asked these questions of Governor Moore to show he has frequently visited the department during the incumbency of different officers and for that purpose of securing title.

Mr. SHERIDAN. We thoroughly understand that, Mr. Gray, and we understand that it is public practice and always has been.

Mr. GRAY. I do not think there was anything improper in it, and I do not want such an impression to go forth.

Mr. SHERIDAN. You made some mention in connection with this Guggenheim memorandum of the Guggenheims having abandoned the Katalla terminal of their railway. Do you recall when it was that they abandoned that terminal?—A. That was in the fall or winter of 1907, as I recall it.

Q. Prior or subsequent to this meeting at Salt Lake City?—A. Subsequent.

Mr. HUGHES. I presume your inquiry is as to his own knowledge?

Mr. SHERIDAN. Yes, of his own personal knowledge?

A. I did not see them abandon it. That is hearsay and common talk we had, but they subsequently moved to Cordova.

(And thereupon this inquiry was adjourned to 10 o'clock a. m., December 3, 1909.)

DECEMBER 3, 1909.—10 O'CLOCK A. M.

INQUIRY RESUMED.

Appearances: Hon. William J. McGee, United States special commissioner; Mr. James M. Sheridan and Mr. William B. Pugh, counsel for the Government; Mr. E. C. Hughes and Mr. John P. Gray, counsel for the claimants.

HENRY W. COLLINS, a witness produced on behalf of the claimants, being first duly sworn, testified as follows:

Direct examination by Mr. GRAY:

Q. State your full name, your residence, and your occupation.—A. Henry W. Collins; Rockford, Wash.; banking.

Q. How long have you lived in this State, Mr. Collins?—A. Almost twenty-two years.

Q. You are acquainted with Clarence Cunningham?—A. Yes, sir.

Q. You are one of the defendant entrymen?—A. Yes, sir.

Q. Mr. Collins, state when you first became interested in securing a coal claim in the Kayak district in Alaska and under what circumstances?—A. I was acquainted with Clarence Cunningham—I mean I was not acquainted with Clarence Cunningham, but with Doctor Cunningham—Doctor Cunningham has been my physician and mentioned this to me, in 1903 in the spring, and said that he thought he could get his brother to locate a coal claim for me, but I did not give it much thought, but in the fall of that year Mr. R. K. Neill told me that he had been up there and there were large deposits and he thought it would be a good thing to get hold of. Probably I never would realize anything in my lifetime but it would make a good asset for my estate and I went into it in 1903 in the fall.

Q. At the time you went into it, and secured a coal claim, had you seen Clarence Cunningham?—A. No.

Q. Through whom were the arrangements made for the location of the claim for you?—A. Mr. R. K. Neill.

Q. Now, Mr. Collins, when did you first meet Mr. Clarence Cunningham?—A. Well, just about a year from that time; probably a year and one month; the fall of 1904.

Q. State what, if any, understanding at the time you went into that and at the time you authorized Mr. Cunningham to get a claim for you through Mr. Neill?—A. None other than he was to get me a claim, and I think I spoke about the probable cost, and he could not say as to it, but he outlined in a general way what was necessary under the laws. I think that is about all.

Q. Did you at that time have any understanding or agreement with Mr. R. K. Neill by which you agreed to hold that claim when you should secure title and then transfer it to any company or corporation?—A. No, sir.

Q. Had you ever any understanding or agreement with him or with anyone else at that time?—A. No, sir.

Q. By which—just let me finish the question—the title should inure to the benefit—the title of that claim or any part of it, or any interest in it, should inure to the benefit of any other person than yourself?—A. No.

Q. Was there any understanding or agreement whatever concerning the consolidation of the claim with any others, or anything of the kind, at the time?—A. No, sir.

Q. You say you met Mr. Clarence Cunningham about a year after that?—A. Yes, sir.

Q. Do you recall executing a power of attorney to Clarence Cunningham to locate that claim?—A. Yes, sir.

Q. When was it, with reference to the time you executed that power of attorney, that you met Mr. Clarence Cunningham?—A. I think it was about that same time, that is about the time, October, 1904.

Q. Did Mr. Cunningham send you that power of attorney?—A. Yes, sir.

Q. And you executed it?—A. Yes, sir.

Q. I refer now to the power of attorney upon the entry papers and application to patent papers executed before J. B. Gilbert, a notary

public, on the 22d day of October, 1904. I now call your attention to an affidavit which was executed before J. B. Gilbert on the 22d day of October, 1904, purporting to have been signed by you, and I will ask you if that is your signature and if you signed that affidavit?—

A. Yes, sir.

Q. Where did you get that affidavit, Mr. Collins?—A. Where did I get it?

Q. Yes.—A. Through the mail.

Q. From whom?—A. From Mr. Cunningham.

Q. Mr. Clarence Cunningham?—A. Mr. Clarence Cunningham.

Q. In that affidavit I call your attention to the following language: "I further swear that I am now in the actual possession of such coal lands through my agent and attorney in fact, and make the entry for my own use and benefit, and not directly or indirectly for the use or benefit of any other parties." Was that statement true at the time you made it, Mr. Collins?—A. Yes, sir.

Q. Had you at any time prior to the making that affidavit and executing that power of attorney entered into any agreement or had any understanding with any person or persons whatsoever under or by the terms of which you should hold your claim for a corporation, organized or thereafter to be organized, or any interest in your claim for any other person or corporation, either then existing or thereafter to be organized?—A. No, sir.

Q. Had you made any agreement or did you have any understanding by which you had in any manner limited your dominion and control or right to the possession and control of that entire claim with any person prior to that time?—A. No, sir.

Q. I call you attention to an application for patent found in the entry papers sworn to before J. B. Gilbert on the 29th day of January, 1906, and I will ask you if you executed that?—A. Yes, sir.

Q. I now call your attention to the statement in that affidavit: "I am now in the actual possession of such land through my duly authorized agent, Clarence Cunningham, of Kayak, Alaska," etc., "and through whom I make the entry for my own use and benefit and not directly or indirectly for the use or benefit of any other party." For the purpose of laying the foundation of your cross-examination I will ask you if that statement contained in that application for patent was true at the time it was made?—A. It was.

Q. Had you, at that time, or prior thereto, had any understanding or agreement with any person or persons under or by the terms of which the claim located for you in Alaska, or any interest therein, should inure to the benefit of any other persons, company, association, or corporation whatever?—A. No, sir.

Q. Had you any understanding or agreement with any person or persons whatsoever that upon the completion of your entry and the purchase from the Government that they should have, they or any one of them, should have any interest in your claim?—A. No, sir.

Q. Had you entered into any agreement or had any understanding that you would consolidate or unite or combine your claim with any other claims for the purpose of mining the coal therein or in the other claims?—A. No, sir.

Q. I call your attention to an affidavit sworn to before J. B. Gilbert, notary public, on the 19th day of December, 1906, and referred to as the Love affidavit.—A. That is my affidavit.

Q. I will ask you if the statements in that affidavit were true at the time you made them?—A. They were.

Q. I call your attention particularly to the following language in said affidavit: "That said location was made for the sole use and benefit of affiant and has ever since so remained and is in his exclusive control; that at no time prior to the location or at any time or since, or at such time or since, has affiant entered into any agreement, express or implied, or pledged himself by promise or otherwise, express or implied, by which the title of said land or any part thereof, or interest therein is to pass to any other person, corporation, or association, whatsoever; that if affiant's said claim goes to entry in the United States Land Office at Juneau, Alaska, and he pays the balance of said purchase price, and certificate issues, he will not be under any contract or obligation or promise to sell or convey said tract to any person or persons or association, or to put the same into any company, or to hold it for any purpose or otherwise dispose of the same, but will be free in every way to hold said tract, and to leave or sell it at any future time; that he does not now know any person or persons or association that intends or contemplates leasing or purchasing said tract." Were those statements true at the time you made them—at the time you swore to that affidavit on the 19th day of December, 1906?—A. Yes, sir.

Q. Mr. Collins, you paid to the Government the purchase price for the Tenino coal claim and received a final certificate of purchase on the 13th day of March, 1907, as shown by the duplicate receipt. Referring now to the 13th day of March, 1907, the time when you received the final certificate of purchase, I will ask you if at or prior to that time you had made any contract or agreement or had any understanding, express or implied, with any person or persons, association or corporation, under or by the terms of which you were to hold your claim or any interest therein for the benefit of any such other person, company, association, or corporation?—A. No, sir.

Q. Had you, prior or at that time, or at any time prior thereto, ever made any contract or had any understanding or were you under any obligation or promise, express or implied, to sell or convey that tract to any person or persons, association of persons, or corporation, or to put the same into any company or joint holding for any purpose?—A. No, sir; I have not.

Q. Were you at that time absolutely free to dispose of or sell that claim and every interest therein?—A. Yes, sir.

Q. Free from any obligation, understanding, or contract whatsoever?—A. Yes, sir.

Q. Mr. Collins, when you first met Mr. Clarence Cunningham, about a year after you had authorized, through Mr. Neill, the location of a claim for you, did you have any conversation with him at that time concerning the organization of a company or of a corporation, or the transfer of your claim or any interest therein to him or to such association or to any other person or corporation?—A. I did not.

Q. Subsequent to executing and receiving this certificate of purchase from the United States Government, to whom did you pay that money for your claim?—A. Why, we tried to send it by express, but we are a little station there and we could not do that; so I asked my Seattle correspondent to do it.

Q. Who was that?—A. The National Bank of Commerce.

Q. To send it to whom?—A. The receiver of the land office at Juneau.

Q. And in due time you received your final certificate of purchase?—A. Yes; in March, I think.

Q. Did you, after receiving that, at any time meet with some other gentlemen who had coal claims in the vicinity of yours, Mr. Collins?—

A. Yes; in the following spring, I think it was, May.

Mr. SHERIDAN. What year?—A. 1907.

Q. Were you present at a meeting held on May 15, 1907, at the office of Finch & Campbell, the minutes of which have been introduced and marked claimants' Exhibit 3?—A. I was.

Q. Subsequent to that time, Mr. Collins, had you attended any other meeting of gentlemen who owned coal claims in this district?—A. On the—I did during the last of June.

Q. Wasn't it, as a matter of fact, in July? I call your attention to it to refresh your memory [handing witness paper].—A. Well, yes; I guess it was.

Q. Was that the meeting you have last referred to?—A. Yes.

Q. When was that meeting you have last referred to held?—A. In July.

Q. What date?—A. July 16.

Q. And at that meeting did you act as secretary, Mr. Collins?—A. Yes, sir.

Q. And this paper which you gave me is a copy of the proceedings as they were kept by you at that time?—A. Yes, sir.

Mr. GRAY. We offer that in evidence.

(Paper marked "Claimants' Exhibit 4.")

Mr. SHERIDAN. As I understand, this is the original you have?

Mr. GRAY. Well, not an original.

Q. Now, have you any original, Mr. Collins, or did you make copies?—A. I really made it out in lead-pencil, and had this done on that.

Mr. SHERIDAN. This was simply a transcript from your lead-pencil notes?—A. Yes, sir.

Mr. SHERIDAN. We have no objections.

The COMMISSIONER. It may be received in evidence and marked "Claimants' Exhibit No. 4."

(Paper marked "Claimants' Exhibit No. 4" admitted in evidence.)

Q. Subsequent to a meeting on the 15th of July, 1907, what did you learn, if anything, of any negotiations for the sale or disposal of any of these coal claims, Mr. Collins?—A. Do you mean after the committee went to Salt Lake?

Q. Yes.—A. Well, that the proposal had fallen through, or dropped—been dropped.

Q. Well, did you know of what action had been taken by them at Salt Lake City? Were you advised of that?—A. Yes, sir.

Q. What, if anything, did you do at that time?—A. I executed a deed and gave it to Mr. Wakefield.

Q. When did you do that? Before hearing of the action which had been taken at Salt Lake City?—A. I think it was.

Q. After you had been advised of what had taken place at Salt Lake or what had been done, then what did you do?—A. I went and got my deed and burned it up.

Q. State why you did that?—A. Well, I did not like the proposition, and I thought I would lose my claim.

Q. Did you at any time consent to the arrangement or to the proposal which had been made at Salt Lake by the committee that were sent there or that visited there?—A. No, sir; I did not like it.

Q. Did you ever agree to it?—A. No, sir.

Q. Or give your consent to it?—A. No, sir.

Q. Mr. Collins, I now call your attention to Government Exhibit 23, and I will ask you if that is your signature to an affidavit sworn to before J. B. Gilbert?—A. Yes, sir.

Q. Where did you get that affidavit, Mr. Collins?—A. Through mail from a Mr. Glavis.

Q. And what did you do with it after receiving it?—A. I think I signed it in about twenty minutes or half an hour and sent it out on the next mail.

Q. In that affidavit, Mr. Collins, you use the following language: "I have read the foregoing affidavit of Clarence Cunningham, who was and now is my agent; I am well acquainted with all of the other coal land entrymen for whom Cunningham is agent." I will ask you whether or not that is a correct statement?—A. Well, yes, as to those that were there that day at the meeting. There are quite a number of these men I don't know.

Q. What meeting do you refer to?—A. At the meeting in Finch & Campbell's office in July.

Q. You use the following language in that affidavit: "I know of my own knowledge that the statements made in the foregoing are true in so far as they pertain to the Guggenheim syndicate and the understanding existing among ourselves as to the disposition of our claims. I know positively that the Guggenheims had nothing to do with our claims whatever. We have an understanding among ourselves that when title was secured we would form a company and combine the entire group, since the conditions are such that one claim could not be profitably mined, as anyone familiar with coal mining appreciates." Referring you now to the testimony which you have given in which you say you had, prior to receiving the final certificate of purchase from the Government of the United States, had no understanding whatever concerning this claim, I ask you to take that affidavit and state what you refer to therein and what was intended thereby in your mind?—A. Well, that the proposition made to the Guggenheim Company was abrogated and not in effect and that we understood in the meeting that in order to develop the claims it would be very difficult for one man to do it himself, and that is what I mean by this understanding existing at the time of this May meeting. It developed out of that meeting.

Q. Did you ever have any other understanding prior to that May meeting?—A. No, sir; I did not.

Q. With any other entrymen in that district?—A. Absolutely none.

Q. Under or by the terms of which you would form a company and combine the entire group?—A. That is the first time.

Q. Or combine any of the claims?—A. That is the first time these things were ever mentioned.

Q. I refer you now to the minutes of the meeting of May 15, 1907, and to that portion thereof where, on motion of Mr. Sweeney, the

chairman was authorized to appoint a committee of 5 who were authorized to form a corporation and for the purpose of acquiring coal claims of yourself personally or such other coal owners that might desire to join the corporation. Is that the joining that you referred to, Mr. Collins?—A. It is.

Q. Had you, prior to that time, any understanding with any other claim owner in that district by which you would unite or join your claim with any other claim or combine it with any other claim?—A. I had not.

Q. In the way of a holding company or otherwise?—A. No; never mentioned.

Q. Mr. Collins, I call your attention to the fact that in the affidavit, as it was prepared, it read, "I am well acquainted with most of the coal land entrymen for whom Cunningham is agent," and the word "most" is scratched out and the word "all" is written over. Could you explain who did that?—A. I did. Why, I mean all of those who were present at Messrs. Finch & Campbell's office; there was quite a number of them.

Q. Were you acquainted with all of the entrymen up there for whom Cunningham was agent?—A. No.

Q. Are you at this time?—A. There are a lot of them that I have never met.

Mr. SHERIDAN. This is Government Exhibit No. 10.

Mr. GRAY. No. 23.

Q. Do you know of any negotiations, or did you have any, either direct or indirect, with the Guggenheims, or anyone else connected with them, prior to that May meeting, Mr. Collins?—A. That July meeting? No, sir.

Q. I refer you to the minutes of the May meeting, and I ask you whether prior to that day if you had ever heard of any request on the part of the Guggenheim Exploration Company, or a conference, or any negotiation concerning any of these claims?—A. No, sir; not prior to this May meeting.

Mr. GRAY. You may take the witness, Mr. Sheridan.

Cross-examination by Mr. SHERIDAN:

Q. Mr. Collins, how old are you?—A. I am almost 48.

Q. In what business are you engaged in at the present time?—A. Banking and farming.

Q. How long have you been engaged in such business?—A. Almost twenty years—twenty-two years—the 1st of April.

Q. Have you at any time been engaged in other business?—A. Yes, sir.

Q. What nature, generally?—A. Mining, electric lights, lighting, power.

Q. Do you operate any mines or power houses or anything of that sort by yourself?—A. Well, not lighting or power, I have mined some by myself.

Q. Now, what position do you occupy in connection with power concerns?—A. I am secretary and treasurer of the Spokane County Electric Company.

Q. How long have you been so engaged?—A. Almost three years.

Q. You have lived the most of your life in this part of the country,

Mr. Collins?—A. Well, at Quincy, Ill., from boyhood or childhood to 26 years old; and from that time—why, in Spokane County.

Q. Now, Mr. Collins, I want you to give us, in your own words, the entire account of how you became interested in the first instance in the coal claims in Alaska, and just continue it on down to this time that you received the final certificate, as briefly and as accurately as you could recall?—A. In 1897 I was mining close to the California line and I became acquainted with R. K. Neill and through him, I think, I spent \$10,000 or \$12,000, and I learned to have great confidence in his judgment; so when he spoke to me, after Doctor Cunningham had first mentioned it to me, I thought it would be good to get a coal location and he had been on the ground and I thought well of it, its general magnitude, etc., and I went in on his judgment and secured this claim. Then he said that the first time that Mr. Cunningham came over that way from Alaska he would endeavor to acquaint us with each other. I am not positive whether it was him or the Doctor that introduced me to Clarence Cunningham, but I met him about a year and one month after the time—the first time I talked with Mr. Neill. I should say, however, that I asked Mr. Neill what this was going to cost and he said he could not tell; it was a hard country to mine in and he spoke about the seasons being short, or something of that kind, and it probably cost me \$3,000 or \$4,000 to secure my title; and I believe everything went along all right until there had to be some rearrangement of posting notices. I remember that, and then the time that I sent the money up to Juneau; I had some trouble in doing that. My little town hadn't the facilities for doing it, so I used my Seattle correspondent, and I think that is all, Mr. Sheridan, until getting this patent—this certificate—

Q. Now, with reference to the conversations you may have had with Clarence Cunningham prior to the issuance of final receipt, give as near as you can the number of those meetings or conferences you had with him, and the nature of the discussion that you had as near as you can recall it.—A. Well, there was really no conferences and very little discussion. I think about half of my conversations were devoted to the expression of my gratitude to his brother, the doctor—

Mr. HUGHES. What do you mean by that?—A. Well, I think I have the record over here at the Sacred Heart for being on the slab the longest of anybody and the doctor pulled me out.

Q. Could you recall any conversation with Clarence Cunningham concerning what was to be done by him, the possible expenses of the operation of your claim?—A. I think he told me what it was necessary to do under the laws. I think I explained that the surveyor-general was an old neighbor of mine back in Illinois and he had told my father that we would have to be very careful and conform to the actual spirit and letter of all the laws, and Mr. Cunningham said what his purpose was, and he spoke about the harbor, and the bad conditions of getting about up to the claim, and I think he said he had given me a very excellent claim, located a very excellent claim. I think he described the measure of the coal, and I think that is about all. But, as to the expenses, he said nothing about that, Mr. Sheridan. He just asked me if it would be satisfactory for him to draw on me and I told him to draw.

Q. You did not place any limitation on him as to the amount he should draw for on you or the time?—A. No, sir; I did not.

Q. You left that to his judgment?—A. I did.

Q. What arrangements, if any, did you have with Clarence Cunningham with regard to compensation for his services in these operations?—A. None at all. I supposed it was taken out of these drafts.

Q. So you left it to him to fix his own compensation in that respect?—A. Yes, sir.

Q. How many times, as near as you can recall, did you meet Clarence Cunningham prior to the issuance of final receipt?—A. I think possibly it might have been three times.

Q. Where?—A. At the Hotel Spokane, I believe, every time.

Q. Did Mr. Cunningham advise you he was in the city, or how did you learn he was here?—A. Well, I am one of the regents over here at the school—

Mr. GRAY. What school?—A. The state normal. I am here about once a week, and I think sometimes twice—and I just happened to meet him in the hotel, in the lobby.

Q. On the other occasions did he advise you that he was in town and wanted to see you?—A. I think that the Doctor and I were arranging for a hunt, and while we were talking about it, he came in on the night train; but I don't believe I had any prior advice of it.

Q. Was there any particular feature of the development or operation of those claims discussed at any one of these three meetings which you now can distinctly recall?—A. Nothing as to development. He told me of the size of one of the measures, and said that it was progressing very well along, I think he used the word tunnel work. I think that is about all.

Q. What understanding did you have from your conversations with him concerning that tunnel work?—A. I don't believe I had any understanding. He just simply mentioned it, and I left him in full charge and control. I knew nothing about coal mining myself.

Q. About how frequently in a year did Clarence Cunningham call on you for money?—A. I think, as a rule, twice a year. Possibly one year there was once, and I think never more than twice a year.

Q. About how much money did you furnish Cunningham in this connection up to and including the date of the payment for the land, at the time that final receipt was issued?—A. About \$4,500 or \$4,600.

Q. Did Mr. Cunningham ever render you any account or statement of the expenses in connection with that claim?—A. I got some report—I think two.

Q. Yes, from Clarence Cunningham?—A. Yes.

Q. Do you recall about what year you received those reports?—A. No, sir; I do not. I received two reports, I think, and I am not certain that I looked them over. I just knew they were expenditures made and put them away. I kept accurate account of the money paid on those drafts.

Q. Now in what way did you keep account of the money you furnished Mr. Cunningham? Did you keep it in any particular book for that especial purpose?—A. No, sir; I just kept these drafts, and I kept track of it in my head, and just about what it was costing me, because I thought it was going to cost about \$3,000 or \$4,000.

Q. I now hand you Government Exhibit No. 5, and I will ask you to state if at any time you ever received such a statement as that

from Clarence Cunningham, or anybody else, and if so, when?—A. Yes, I received that.

Q. About when?—A. 19—— I think it must have been some time in 1904.

Q. From Clarence Cunningham?—A. Yes, sir.

Q. Was it delivered to you personally by him or sent to you by mail?—A. By mail.

Q. From Alaska?—A. I think it was from Katalla or Kayak.

Q. Did you preserve that statement?—A. Yes, sir.

Q. You have it in your possession now?—A. Yes, sir.

Q. I hand you Government Exhibit 6 and I will ask you to state if at any time you received such a statement as sent out in this exhibit; and if so, from whom.—A. I received that from Mr. Cunningham.

Q. Approximately when?—A. Well, it would be probably in December, 1905, or in the early spring of 1906.

Q. Personally or by mail?—A. By mail.

Q. From Alaska or elsewhere?—A. Probably from Alaska.

Q. I will hand you Government Exhibit No. 7, which is a report by H. L. Hawkins, on the claims now under investigation, and I will ask you to state if you ever saw this report before; and if so, under what circumstances.—A. That was mailed to me.

Q. By whom?—A. By Mr. Cunningham.

Q. From Alaska?—A. I think so.

Q. Approximately when?—A. I guess about 1906 or 1907.

Q. I hand you Government Exhibit No. 8 and ask you to state if at any time you received such a statement from anyone; and if so, when.—A. Yes; I received this from Mr. Cunningham in 1907.

Q. Sent you by mail?—A. Yes, sir.

Q. From Alaska?—A. I think so.

Q. I hand you Government Exhibit No. 9 and ask you to state if at any time you received such a statement from anyone; and if so, under what circumstances?—A. I received that from Mr. Cunningham.

Q. By mail?—A. Yes, sir.

Q. From Alaska?—A. I think so.

Q. Have you preserved all the others of these statements; that is, I mean these I have shown to you?—A. Yes; they are all of them filed in my file.

Q. I now call your attention, Mr. Collins, to an affidavit executed by you on the 19th day of December, 1906, before J. B. Gilbert, a notary public, at Rockford, Wash., and which is in evidence under the stipulation between counsel, being the affidavit of applicant known as the Love affidavit. I now hand you this affidavit and ask you, if you recall, to state, as near as you can, the circumstances under which you received it?—A. Mr. Love mailed it to me from Portland or Seattle and asked me if the statements therein were true to sign it or make any changes or alterations I deemed necessary; that he wanted to get at the facts, and I signed it and sent it back, I think to Portland.

Q. Did you call on Mr. Love for the purpose of having this affidavit prepared, or did he just simply send it to you?—A. Sent it to me.

Mr. GRAY. Now just a minute—well, go ahead.

Q. Did you have any knowledge of the requirements of this affidavit until Mr. Love called attention to it?—A. I never met him, either.

Q. Have you in your possession the letter which accompanied this affidavit when you received it?—A. I think I have.

Q. Can you recall approximately when you received it?—A. Why, I don't know; I think it was shortly before I got the receipt. It must have been three or four months before I got my receipt in 1907.

Q. I presume it would have been approximately the time it was signed?—A. Yes, sir.

Q. Which was the 19th of December, 1906?—A. Yes, sir.

Q. I now call your attention to Government Exhibit No. 23, and I wish to ask you about how long you had that affidavit in your possession before you signed it?—A. Oh, probably twenty minutes or a half an hour.

Q. You received it by mail, as I understand you, Mr. Collins?—A. Yes, sir.

Q. And you returned it by mail to Mr. Glavis at Portland, Oreg.?—A. Yes, sir.

Q. On April 21, 1908?—A. Yes, sir.

Q. From Rockford, Wash.?—A. Yes. I may not have been at home, Mr. Sheridan. I am so much away that that accounts for the difference between the receipt at Rockford and my sending it away. I know I sent it almost immediately away—signed it almost immediately and sent it away.

Q. I observe that the letter by which you returned this affidavit to Mr. Glavis, and which is a part of this exhibit, states: "Please find affidavit, as requested, in your favor of the 18th inst."?—A. Well, I signed and sent it away immediately upon its receipt the same day. It takes a day and a half out from Portland at night.

Q. Now, I wish to have you consider this affidavit a little more in detail, Mr. Collins. I see that the letter of Mr. Glavis to you, concerning this affidavit to you for your consideration and signature, was sent to you according to your own letter on the 18th of April, 1908, and that you returned it on April 21, 1908. Can you recall whether or not you had considered it over more time than the few hours that you have referred to?

Mr. GRAY. Now, just a minute. I think you are mistaken or do not remember. He said a few minutes or twenty minutes.

Q. Oh, well, whatever the time was he said.—A. What was the question, again?

Mr. SHERIDAN. Read the question.

(Question read.)

A. No; I got it and looked it over and signed it and sent it right back.

Q. How many hours did you say that Portland was from Rockford, Wash., by train ordinarily?—A. It is a day and a half in the mails.

Q. Now, again inviting your attention to Government Exhibit 23 and to that part of it wherein you make a corroborative affidavit to the affidavit of Clarence Cunningham, dated March 6, 1908, which is a part of this exhibit, I ask you if the handwriting in ink on your affidavit herein is your handwriting?—A. Yes, sir.

Q. And this interlineation of "most" and the erasure of "all" is also your handwriting and as you understood it?—A. Yes, sir.

Q. I now invite your attention to Claimants' Exhibit 3, being the minutes of the meeting held in the office of Finch & Campbell, Spokane, Wash., May 15, 1907. I will ask you to state how it was that this meeting was called?—A. I don't know how it was called. That was one of the times that I met Mr. Cunningham, and I said, "How long will you be in town," and we went over to Finch & Campbell's office.

Q. Before you went over there to Finch & Campbell's, what did he say to you about this meeting?—A. He said he wanted to have a meeting and asked if I would attend it.

Q. Did he say he wanted the meeting?—A. He wanted it.

Q. He wanted it?—A. Yes, sir.

Q. Did you receive any letters announcing the intention to call such meeting?—A. No, sir.

Q. You just merely had this word from Clarence Cunningham and then you went and attended the meeting?—A. Yes, sir.

Q. As I understood you, these minutes were originally taken down by you in lead pencil?—A. No; Mr. Burbidge was secretary at that time.

Q. But Mr. Burbidge was present and you were present at this meeting, however?—A. Yes, sir.

Q. It speaks in this exhibit, Claimants' Exhibit No. 3, of a committee having been appointed by the chairman, consisting of yourself and others. Please tell us what that committee did subsequently to its appointment.—A. We left the office and went over to Mr. Wakefield's—he is an attorney—to see what could be done toward forming a company, and he was not in, and I left on the evening train for my home.

Q. Was Mr. Wakefield an attorney in Spokane, Wash.?—A. Yes, sir; in Spokane, Wash.

Q. What are his initials?—A. W. J. C. Wakefield.

Q. Was that all you had to do, or did, on the committee on which you were appointed?—A. Yes, sir.

Q. Did you subsequently at any time perform any further duties under this appointment on that committee?—A. No, sir; he was either not at home or he was sick. I never met the committee in my life, again.

Q. Was it subsequent to your appointment on this committee that you met him?—A. No, sir; I met him once in the Republican convention and down here at the Athletic Club, since.

Q. And that was before you were appointed on this committee?—A. Yes, sir.

Q. You did not have any conference with him on those occasions concerning those claims?—A. No, sir; just politics and general things.

Q. Now, Mr. Collins, I call your attention to Claimants' Exhibit No. 4, consisting of the minutes of the meeting of July 16, 1907, in the office of Finch & Campbell, at Spokane, Wash. You were present at that meeting, were you not?—A. Yes, sir.

Q. And you acted as secretary?—A. I did.

Q. In here, in these minutes, it states, "Owing to Mr. Wakefield's absence from the city, no report was obtainable, and the number of

these returned to him for deposit with the Union Trust Company as per request of committee appointed at a previous meeting." Now, give us your understanding about these deeds of trust.—A. Some one in this committee evidently told me he was absent and they could not get this information, and I put it down as secretary.

Q. Do you know of your own knowledge how many deeds of trust had been deposited with this trust company or deeds deposited with this trust company in escrow?—A. I do not. I don't believe there was any.

Q. Why did you believe that?—A. Why, they gave them to Mr. Wakefield, and there was so much dissatisfaction I think they never reached the trust company.

Q. You further state in this memorandum that all of the persons present agreed to ratify any action taken by said committee. That was a correct statement of what had occurred?—A. It was.

Q. Now, as I understand you, Mr. Collins, this resolution referred to in these minutes was passed unanimously? I read from exhibit marked "Claimants' Exhibit 4," for the purpose of refreshing your memory on that point: "The motion was unanimously carried that the chair appoint a committee of three to go to Salt Lake upon the above date and negotiate the best terms possible for all concerned." That is a correct statement or not?—A. I think so.

Q. Of what occurred?—A. I think so.

Q. Now, as I understood you, on your direct examination you stated that you did not approve of this move in negotiating with the Guggenheims. Give us an explanation of just what you mean.—A. That I did not approve of this committee going there.

Mr. GRAY. He did not say that.

Q. Or the negotiations with the Guggenheims?

Mr. GRAY. He said he did not approve of that proposition that had been made over at Salt Lake City, and pursuant thereto he went and pulled his deed down and burned it up.

A. Yes, that is what I said.

Q. I want the witness to answer the question.

Mr. GRAY. I simply wanted you to be fair with him.

A. That is what I said, Mr. Sheridan, that I did not approve of the arrangement proposed to be made.

Q. But you did approve, however, of the committee going to Salt Lake City, but you did not approve of the proposition made to the Guggenheims at Salt Lake City?—A. Yes, sir—

Q. Well, now—

Mr. GRAY. Well, that is a debatable question.

Q. Why didn't you approve of it, Mr. Collins?—A. Well, it looked to me as if the Guggenheims might get my claim.

Q. In what way?—A. Why, under this proposed agreement or proposition.

Q. Well, didn't you rely on the judgment of these entrymen sent there for the purpose of carrying on these negotiations to protect your interests?—A. Well, I did not like the terms of that arrangement and it just looked a little to me as if I was giving it away; as if I was giving my claim away.

Q. I hand you now Government Exhibit 10, being the Guggenheim memorandum, and I will ask you to turn to that part that you

consider would be detrimental to your interests under that agreement?—A. Well, this section seven—

Mr. GRAY. Start right in at the beginning and give that question consideration.

A. This section was what I particularly disliked, section 7.

Q. Read it.—A. "Said corporation shall enter into an agreement giving to said Guggenheim or his nominee the exclusive right to purchase for the period of twenty-five years the entire run of mine coal mined from said property, or so much thereof as the said Guggenheim or his nominee may require or demand, for the sum of \$2.25 per ton of 2,240 pounds." I thought that was giving it away. Shall I read the rest of it?

Q. Any other part that is objected to by you?—A. Well, then, further, in section 10, they were to have for their own use on locomotives, etc., for the sum of \$1.75 per ton of 2,240 pounds, delivery to be made at the mine or bunkers or on the cars of such railway. I didn't like that.

Q. Why didn't you?—A. I just thought it was giving it away.

Q. Calling your attention to section 4 of this Guggenheim memorandum, I will ask you if you had any objection to that?—A. Yes, sir.

Q. What were your objections to that?—A. About the same objection that it would lead to their getting the whole thing, possibly.

Q. For the purpose of having the record clear, section 4 reads: "Title to all of said properties, including said inchoate water rights, shall be transferred to said corporation, in consideration for which there shall be issued to said vendors 25,000 shares of said capital stock."—A. I would say, Mr. Sheridan, I have actually been offered more money than that would have given me.

Q. For the claim?—A. Yes, sir.

Q. By whom?—A. By Mr. Sweeney.

Q. One of the entrymen in this inquiry?—A. Yes, sir.

Q. Charles J. Sweeney?—A. Charles Sweeney, I think it is.

Q. When did he make you that offer, Mr. Collins?—A. Why, I think it was the afternoon or early evening of the day of this meeting, in June or in July.

Q. In July of what year?—A. 1907.

Q. At Spokane?—A. Yes, right over here on the street.

Q. Now, what conversation did you have with Mr. Sweeney at that time concerning that offer of Mr. Sweeney?—A. I did not have much of any. He just asked me if I would take, I think it was, \$22,000 for my claim. I told him no, I would not.

Q. Did he say anything about whether or not he was offering that for himself or somebody else?—A. No, he did not, and I think he was offering it for himself.

Q. That is all the conversation you had in that connection?—A. Yes; I told him I would not think of it.

Q. At the time you transmitted the money to the Government for the payment of your claim to the register and receiver in Juneau, Alaska, how did you say you sent that money?—A. Through the National Bank of Commerce of Seattle.

Q. Where was Mr. Clarence Cunningham at that time?—A. I could not say.

Q. Was there any particular reason why you should not have transmitted this money to Clarence Cunningham, as you had all other

moneys in connection with that claim, for his expenditures in Alaska?—A. There was no particular reason, I guess; but I think Mr. Cunningham told me to either send it by express or by some Seattle bank to the register and receiver himself, and not to Mr. Cunningham.

Q. So that from the time you paid Mr. Cunningham to locate a claim for you in Alaska down to the time when this Guggenheim proposition was first taken up you had had no conversation or consultation with either of these entrymen with a view of transferring any interest in your claim to the Guggenheims?—A. No, sir; not until this time.

Q. What was your idea in the first instance in taking up this thing with reference to the operation of these claims? How did you propose to do it?—A. Let's see; I don't know. I thought it would be a good asset; just as I would buy a piece of unimproved property and let time and future developments make it worth something.

Q. You had no idea of developing it in the near future?—A. Only so far as finding its worth, as near as I could.

Q. Well, now, didn't you have an understanding with these other gentlemen that subsequent to obtaining title to these lands from the Government you would combine for the purpose of economy?—A. No, sir; I never had any such understanding.

Q. You never had any such understanding as that at any stage of this matter?—A. No, sir.

Q. You merely intended to take that claim as a speculative proposition and wait for its natural development, by the development of Alaskan coal?—A. I thought that would make it valuable; I would take it and do as we do in mining, make my assessment work, etc., on it then as required.

Q. Now, at the time that Mr. Cunningham offered to take up the claim for you did he tell you any others had taken claims in that vicinity; and if so, who they were?—A. Mr. Neill told me about that.

Q. Well, what did he say about that?—A. He said he had been up there, and he had had a claim located for his brother, whom I knew very slightly, and one for Mr. Finch and one for Mr. Campbell, and possibly he mentioned others.

Q. That was the conversation you had with Mr. Neill?—A. Yes.

Q. Prior to authorizing Mr. Neill to negotiate with Clarence Cunningham for the location of a claim for you?—A. Yes, I had not met Mr. Cunningham at this time.

Q. Were you personally acquainted with any of the gentlemen you just named?—A. Just met Mr. Neill once. That is, Mr. R. K. Neill's brother. Mr. Finch I had known for a good many years.

Q. Any of the others?—A. Mr. Campbell I knew very slightly then, a speaking acquaintance, and, of course, the Doctor.

Q. Doctor Cunningham?—A. Yes, sir.

Q. Now, were you at the time you authorized Mr. Neill to deal with Mr. Cunningham to locate this coal claim for you financially interested in the concerns in which any of these 32 entrymen were interested at that time?—A. Yes, sir.

Q. Tell about it?—A. I was interested in an undeveloped mine near Wardner in which Mr. Finch has an interest.

Q. Idaho?—A. Yes, sir.

Q. You were at that time?—A. Yes, sir; and I have been ever since 1897 or 1898. That is all.

Q. You were not financially interested in any concerns as far back as 1904 with any of the other entrymen?—A. No, sir.

Q. Did you become interested in any other concern financially with any other of the 32 entrymen subsequently to and down to the time of the issuance of final receipt to your claim?—A. No. I owned some stock in one of the banks here and Mr. Campbell might own some stock in it; I don't know. I have never seen him in there.

Q. I call your attention to Government Exhibit 29, consisting of the articles of incorporation of the Behring River Railroad, and I wish to ask you if you, at any time, since you became interested in this coal claim in Alaska and down to the time of final receipt, had any knowledge of the purpose of the claimants, or any of the claimants, to build such a railroad?—A. No, sir.

Q. When did you first learn of the plan on the part of any entrymen to build such a railroad?—A. I think it was in the newspaper last week. That is the first knowledge I had of it.

Q. You never heard anything of it before?—A. No, sir.

Q. Now, did you never consider with any of the entrymen the question of the possibility of railway connection with your coal claim and the other adjoining claims?—A. I think Mr. Cunningham said there would have to be a railroad built some time to get the coal out.

Q. You did not consider the proposition yourself?—A. I did not.

Q. Did you at any time, from the date on which you had this conversation with Mr. Neill concerning the location of the claim in Alaska and down to the time of final receipt, consult any attorneys in connection with the handling of your claim?—A. No, sir.

Q. Did you subsequently to the final receipt?

Mr. GRAY. I object, as immaterial.

Q. Other than with present counsel?

Mr. GRAY. I object upon the ground that it is immaterial and irrelevant. I did not object yesterday because of the reasons I then gave, but I think in permitting it to go on with other witnesses is unnecessarily and improperly enlarging the record.

The COMMISSIONER. I can not see what bearing it would have on the case, Mr. Sheridan. That took place long after the issuance of the final certificate.

Mr. SHERIDAN. Very well. That is within the authority of the commissioner presiding to rule on that, of course.

The COMMISSIONER. Unless you intend to connect it with some transaction that has gone before.

Mr. SHERIDAN. I just merely wished to get general information on that point.

The COMMISSIONER. Yes; well, I will sustain the objection.

Q. Have you any other interests in Alaska?—A. No, sir.

Q. Have you ever been in Alaska yourself?—A. No, sir.

Q. The funds which you advanced for the purpose of prospecting and developing the country in Alaska were, as I understand it, your own funds?—A. Yes, sir.

Q. Did you need to borrow any money for this purpose from any one?—A. No, sir.

Q. I call your attention to Government Exhibit No. 3, especially that part of it on page 1 of what purports to be a copy of the Cuning-

ham journal wherein it is stated "That each of the entrymen have agreed to have one-eighth of his stock issued to Clarence Cunningham in consideration for his services in securing said land." I will ask you to state if that was your understanding.—A. No, sir.

Q. I ask you to read that one page and scan it over to yourself and give us your views on the statements therein contained.

Mr. GRAY. I think it is hardly proper to get his views. I think perhaps a statement from him as to whether or not he ever had any such arrangement, or was a party to any such arrangement, would be proper.

Mr. SHERIDAN. I presume that is what he would give.

A. I never saw of it before. I have heard of it in the newspapers, I believe, last week.

Q. Did you ever see what is known and described in this inquiry as the original Cunningham journal?—A. No, sir.

Mr. SHERIDAN. That is all.

Redirect examination by Mr. GRAY:

Q. Were you ever a party to any such agreement as represented on that page that Mr. Sheridan showed you?—A. No, sir; I never saw or heard of it until last week.

Q. Mr. Collins, in your direct examination you said you had received a couple of reports from Mr. Cunningham and upon cross-examination you said—you were shown five or six and said you had received all of those?—A. Just mistaken as to the number. I just got them and put them away.

Q. Did you give consideration to them or do you know now what they contained without examining them?—A. No, all I knew at the time was they were reports and that I paid very little attention to them.

Q. What understanding, if any, did you have as to Mr. Cunningham receiving compensation for his work up there?—A. No understanding other than my claim would cost me some \$3,000 or \$4,000 and I arranged with him to draw on me, and I never questioned what his expenses were or what they were not.

Q. Now Mr. Sheridan has referred to this meeting which was held on the 17th of July—or the 16th of July, 1907, and has referred you to the minutes of that meeting. Did you understand at that time that you were to be bound by any action that was taken by this committee at Salt Lake?—A. No.

Q. Did you understand that they were authorized to enter into a contract that would bind you to convey or dispose of your claim upon an agreement which was not satisfactory to you?—A. My understanding was that they were to go down there and enter into what might be called a tentative agreement or arrangement to be submitted to me and others as well.

Q. And then you were to have the right to either approve or reject it upon consideration?—A. I certainly did think that.

Q. And pursuant to that view you did refuse to carry it out?—A. I did.

Q. Now, I will ask you again to explain, in the minutes of that meeting, the language used by you—all of the members present agreed to ratify any action taken by such committee?—A. Well, my use of the word "ratify" probably does not express my understanding and

no one else, I believe. My understanding was that we sent them there to make arrangements to be submitted to each one, and that this clause here is more my way possibly of saying it is agreeable that they should go down there, and that they went with our full consent.

Q. Now, you say the proposal which was made down there was unsatisfactory to you?—A. Yes, sir.

Q. And that you declined to consider it further?—A. Yes, sir.

Q. Why were these propositions unsatisfactory to you, Mr. Collins, that you have referred to?—A. Well, I did not see how it was possible for us to mine a long ton of coal at that price and give it to the Guggenheims. I don't believe it is.

Q. On the other propositions, subdivision four, that 25,000 shares of the capital stock which would be issued to the Guggenheims under that proposal. Why was that unsatisfactory to you?—A. Well, I figured out my share and I had been offered more than that in cash.

Q. Were there other provisions in there quite satisfactory to you, or was that the principal objection?—A. Yes. The cost of coal here. Now, this \$1.75 per ton of 2,240 pounds for that long period—why, we never could have done it.

Q. In other words, you were fearful if that agreement was accepted the Guggenheims would get the property and you would get nothing?—A. Why, sure I was.

Recross-examination by Mr. SHERIDAN.

Q. With reference to Claimants' Exhibit 4, being the minutes of the meeting held July 6, 1907, in Spokane, already referred to, you do then state that the ordinary interpretation that would be apparent on the face of the statements in these minutes concerning the ratification of the act of said committee is not really what you meant at that time?—A. No, I don't believe it was, Mr. Sheridan. These minutes were never read or approved, or any comment made whatever or discussed and I just dashed them off and signed them.

Q. They were prepared by you from your notes taken at the meeting?—A. Yes.

Q. About how long afterwards?—A. Oh, immediately afterwards.

Q. Probably on the same day?—A. I think just that evening; that is, probably 4 or 5 o'clock in the afternoon.

ANDREW L. SCOFIELD, a witness produced on behalf of the claimants, being first duly sworn, testified as follows:

Direct examination by Mr. GRAY:

Q. Will you state your full name, your residence, and your occupation, Mr. Scofield?—A. My name is Andrew L. Scofield; I live in Los Angeles, county of Los Angeles, and State of California. I have no particular occupation at this present time.

Q. Where did you live before you went to Los Angeles?—A. I lived in Wallace, Idaho.

Q. For how many years did you live there, Mr. Scofield?—A. I came there, into the Coeur d'Alenes, in April, 1884.

Q. And lived there continuously until you went to Los Angeles to reside?—A. Yes; that was twelve years ago.

Q. What business was you engaged in up there?—A. Well, I was engaged in most everything. I was in the stage business, the livery business, and mining. I sold the interest in the Monmouth about six years ago.

Q. Since that time you have not been engaged in any active business?—A. Well, I have been in business in Los Angeles—that is, I have dealt in real estate.

Q. Now, how long have you known Clarence Cunningham?—A. Since the fall of 1884.

Q. In the Coeur d'Alene country?—A. Yes, at Murray, Idaho.

Q. In the Coeur d'Alene country?—A. Yes, sir.

Q. When did you first become interested in securing a coal claim in Alaska?—A. Along—do you want me to tell the whole thing?

Q. Yes.—A. I was in Wallace in 1904, and being so well acquainted with Mr. Cunningham I made inquiries where he was, and there was some parties told me he was in Alaska looking after some coal land, and they told me some of them were going to locate claims with him. I went home and I could not say just the date, but I was walking down the street one morning in Los Angeles and I met Mr. Cunningham, and I had not seen him for a number of years, and of course was pleased to see him, and I invited him out to my house and I says, "Clarence, they tell me you are up there in Alaska looking up coal property or something to that effect," and he said, yes, he had been up there for some time, and he went with me to my home, and I says, "Wouldn't there be a show for me to get a location?" Why, he said, I think probably yes, or I could get one. I would like to have my friends have one; he would like to get his oldest acquaintances interested up there; he thought probably that it would prove to be something in time. He said it would take a good while. I asked him how much it would cost. Well, he said, he could not tell exactly, but they had been to a good deal of expense, and finally he told me he thought it would cost about \$1,600, and I said, "All right, I will take one; that is, I will get you to locate me a coal claim." He was going on East, and I told him when he came back to write me, and I would send him the money; and when he returned he wrote me and sent me a power of attorney, I think, for him to locate claims for me. I sent him the money and the power of attorney.

Q. I hand you a power of attorney herewith in the papers in connection with coal entry No. 1, acknowledged by you before J. A. Walkup in Los Angeles on the 31st day of January, 1905, and I will ask you if that is the power of attorney that you refer to?—A. Yes, that is the one.

(And thereupon the further hearing of this inquiry was adjourned till 1.30 o'clock p. m. of said day.)

DECEMBER 3, 1909—1.30 P. M.

INQUIRY RESUMED.

Appearances: Hon. William J. McGee, United States special commissioner; Mr. James M. Sheridan and Mr. William B. Pugh, counsel for the Government; Mr. E. C. Hughes and Mr. John P. Gray, counsel for the claimants.

A. L. SCHOFIELD, having been heretofore sworn, on the stand.

Direct examination (resumed) by Mr. GRAY:

Q. Mr. Schofield, I call your attention to an affidavit subscribed and sworn to before J. A. Walkup on the 31st day of January, 1905.—

A. I signed that; yes, sir.

Q. At the same time you signed your power of attorney?—A. Yes, sir.

Q. And I direct your particular attention to the following language, contained in that affidavit:

I further swear that I am now in the actual possession of said coal lands, through my agent and attorney in fact, and make the entry for my own use and benefit and not directly or indirectly for the use or benefit of any other party.

And directing your attention to that language, was it true at the time you made that affidavit?—A. Yes, sir.

Q. Mr. Schofield, after you saw Mr. Clarence Cunningham, on the occasion you have referred to in 1904 in Los Angeles, when did you next see him?—A. I saw him on the 15th day of May, 1907, in Spokane Falls, the next time I saw him.

Q. Spokane, Wash.?—A. Yes, sir.

Q. I call your attention to the application for patent signed and sworn to by you on the 1st day of February, 1906, before J. A. Walkup, a notary public.—A. Yes, sir; I signed that.

Q. And I desire to call your attention to the language in that affidavit, as follows:

I am now in actual possession of said land through my duly authorized agent, Clarence Cunningham, of Kayak, Alaska, whom I have heretofore appointed as such, for the purpose of making the location, recording, and entering of said coal lands for me in my name, and through whom I make the entry for my own use and benefit, and not directly or indirectly for the use or benefit of any other party.

Referring to that language, I ask you if that was true at the time you made it?—A. It was.

Q. Mr. Schofield, at the time you made that affidavit, the first one I called attention to, on the 31st day of January, 1905, in which you swore that you made the entry for your own use and benefit, and not directly or indirectly for the use or benefit of any other person, had you, prior to that time, made any agreement, contract, or had you had any understanding with Clarence Cunningham, or with any other person, that your claim, or any interest in it, when you should secure title, should inure to the benefit of Clarence Cunningham, or any other person, or any other association, or any other corporation?—A. No, sir.

Q. Had you had any understanding, or had you made any promise, or were you under any obligation to join it with any other coal claim or join any interest in it with any other interest in any other coal claim in Alaska for the purpose of mining them together?—A. No, sir.

Q. Had you made any contract, or had you any understanding with any person whereby you had limited your control to sell or dispose of that coal claim or in any way limit your dominion over it?—A. No, sir.

Q. I now refer to the time when you swore to that application for patent on the 1st day of February, 1906; had you at that time ever made any agreement or had you ever had any understanding or were you under any obligation or promise whatever, either to Clarence Cunningham, or with him, or to or with any other person or association of persons or corporation, that the title to your claim, when you should secure patent for it, or any interest therein should inure to the benefit of anyone but yourself?—A. No, sir.

Q. Had you, at that time, any understanding whatever with anyone that you would consolidate or combine or unite your claim with any other claim for the purpose of mining or working it?—A. No, sir.

Q. I call attention to the affidavit here referred to in this proceeding as the Love affidavit, sworn to by you on the 10th day of January, 1907, before J. S.—Jolly—or J. S. Hughes, notary public of Los Angeles County, Cal.—A. Yes; I signed that.

Q. You have read it over since you came here?—A. Yes, sir.

Q. Were the statements in that affidavit true at the time you made them?—A. Yes.

Q. I call your attention to the following language in that affidavit:

That said location was made for the sole use and benefit of the affiant, and has ever since so remained his, and is in his exclusive control; that at no time prior to the location, or at such time, or since, has affiant entered into any agreement, express or implied, or pledged himself by promise or otherwise, express or implied, by which the title to said land or any part thereof, or any interest therein, is to pass to any other person or association whatsoever.

Was that true?—A. That is true; yes, sir.

Q. Had you made any agreement?—A. No, sir; never made any agreement with anybody.

Q. Concerning that?—A. No.

Q. To the following language I also call attention:

That in the event said claim goes to entry in the United States land office at Juneau, Alaska, and the receiver's receipt for the purchase price issues, he will not be under any contract or obligation or promise to sell or convey said tract to any person or persons or association, or to put the same into any company or joint holding for any purpose or otherwise dispose of same, but will have control in every way to hold said tract to lease or sell it at any future time.

Was that true?—A. Yes, sir.

Q. I ask you, Mr. Schofield, if you recall the time when you paid the United States for that land?—A. I can not tell just the date; no; but it was, I think, in 1896, if I remember, or 1897—no, 1896.

Q. 1906?—A. 1906, yes; but I would not be positive.

Q. Just state what you did.—A. Well, I got a letter from Mr. Clarence Cunningham telling me to send \$1,600 to the land receiver in Juneau, Alaska, and to send currency. I went to the First National Bank, where I do business, and drew out \$1,600. I could not say whether it was a \$1,000 bill and a \$500 bill and a one, or whether it was three \$500 bills and a one \$100 bill, but I drew out the currency and I went to the express office and paid them \$20 express to send it to the receiver—I forget his name—and after it got there he sent back a receipt that he had received the money, but could not give a receiver's receipt at that time, and I could not say how long the money was there, but it was a number of months, and I finally got a receiver's receipt—No. 1, it was—for my claim, the Newgate.

Q. That was dated February 28, 1907; that is the duplicate that I show you?—A. Yes, sir; that is it. Yes, this is February 28.

Q. 1909?—A. Yes; and it was the fall before, some time, that I sent the money; I could not say what time.

Q. February 26, apparently?—A. Yes, Mr. Sheridan. One says 26 and one 28. If that is immaterial, it is a clerical error.

Mr. SHERIDAN. Yes.

Q. Mr. Schofield, between the time when you first met Mr. Clarence Cunningham in Los Angeles and requested him to locate a claim for you, and the time when you received that final certificate of purchase from the register or receiver at Juneau, had you ever seen Mr. Cunningham?—A. No, sir.

Q. Had you, between those dates, had any discussion with any other person who held or owned, or claimed to own, a coal claim in that

vicinity concerning the same?—A. Not that I know of. I may have seen one or two. Mr. Finch came down to Los Angeles once in a while, but we did not discuss the coal business at all. I seen him, but I don't think we talked that over at all. I can not recall anything of the kind, and I did not see any of the claim owners but him, I don't think, only that time.

Q. When did you first discuss any matters connected with any of these coal claims with any of these other persons who had entered claims in the same vicinity after that first conference with Mr. Cunningham in 1904?—A. The 15th day of May, 1907.

Q. That was here at Spokane?—A. Yes; at Finch & Campbell's office.

Q. You attended that meeting held at that time?—A. I attended that meeting; yes.

Q. And at that time you had received your final certificate?—A. I had received my final receipt.

Q. Now, then, at or prior to the time you received the final certificate of purchase had you ever had any contract of any kind or nature with any persons whatsoever with reference to your coal claim?—A. No, sir.

Q. Or had you had any understanding with anyone as to how you should develop it or open it?—A. No, sir.

Q. Or had you had any understanding that you would combine it with any other claims in that vicinity for the purpose of working it?—A. No, sir.

Q. Or mining it?—A. No, sir.

Q. Mr. Schofield, you say you attended a meeting here on the 15th of May, 1907?—A. Yes, sir.

Q. How did you happen to attend that meeting?—A. Well, I left this country about twelve years ago and I have been interested in the Coeur d'Alenes ever since, and I generally come up every year, and my wife generally comes with me. We take a trip every year and go to Wallace, and, with the exception of this last time, I have not been here before since the 15th of May, 1907, before now.

The COMMISSIONER. To what do you refer when you say this country? You referred to this country.—A. To all this Coeur d'Alene—this northern country. We always take a trip every year—

Mr. HUGHES. You mean for twelve years you have lived in Los Angeles?—A. Yes, sir.

Q. And when you take this trip you mean you take a trip back to this country? A.—Back to this country, yes; for I had interests here and was looking after them. I got a letter from Mr. Cunningham stating that he was going to hold a meeting in Spokane for the claim owners and would like to have the claim owners, as many as could come, there, and if I was coming up this way he would like to have me come up about that time. So I made my trip at that time.

Q. At that meeting in May, 1907, what took place that you recall?—A. Well, they discussed the proposition of trying to do something with these coal claims, to see if we could develop them.

Q. Had you ever had any talk with any other of the other coal owners prior to that time?—A. Not any.

Q. Any of the other claim owners prior to that time?—A. No.

Q. Or any written communication with any of them?—A. No.

Q. As to how you should combine or develop your claim, your coal claim?—A. No, sir; I had not seen them.

Q. You had not had any communication about the matter?—
A. No.

Q. Now, Mr. Schofield, subsequent to that meeting, what did you do, subsequent to that meeting in May? Were you present at any other meeting after that?—A. No, sir.

Q. I call your attention to this statement in the minutes of the meeting of May 15, 1907:

Thereupon, on motion of Mr. Sweeney, seconded by Mr. Finch, the chairman was authorized to appoint a committee of five, who should organize a corporation for the purpose of acquiring the coal claims owned by those present, and those of such other claim owners as might desire to join the corporation, the committee to secure deeds to the mining claims, and to issue receipt therefor, and to take all necessary steps to complete the organization of the company ready for the transaction of business.

Do you recall that, Mr. Schofield?—A. Yes.

Q. And that is substantially correct, is it?—A. Yes, sir; I think so.

Q. What did you, pursuant to that, after the appointment of that committee?—A. Well, I was here to this meeting, and I went home, and that is all I knew about it. I heard that they did not do anything, and I never had any—that is, never met with any of them to discuss anything else, and know nothing about it.

Q. Now, did you afterwards see a copy of that proposal that was entered into in Salt Lake City which was signed by a committee that was afterwards appointed, consisting of Mr. Cunningham, Mr. Campbell, and Governor Moore?—A. Well, I don't know whether I ever saw it or not. I can't say I did. I don't think I did.

Q. Subsequent to that time, Mr. Schofield, what did you do with your claim?—A. After that time?

Q. Yes.—A. The 12th day of last March, 1909, I sold my claim.

Q. To whom?—A. I could not tell you who I deeded it to, but I done the business with H. B. Winchell, of Minneapolis.

Q. Do you remember now to whom the deed was made?—A. I can not tell you.

Q. To refresh your recollection, was it to Fred B. Snyder?—A. Snyder, that is it. Yes, Snyder.

Q. Did you receive your consideration?—A. Yes, sir.

Q. What was it?—A. Fifteen thousand five hundred dollars.

Q. Did you consult with any other claim holder in that district, or with any one interested there?—A. No, sir.

Q. Prior to selling that claim?—A. No, sir.

Q. Did you consult with Mr. Cunningham, or advise him? Just go on and state what the facts are.—A. No, sir; I sold the claim. I have not had a word from Mr. Cunningham since I sold it, and I have not written him a word. I never had any communications with him whatever.

Q. Did you, before you sold it, have any communications with him to the effect you were going to sell it?—A. No, sir; not at all.

Q. Did you notify him that you had sold it?—A. No, sir.

Q. Did you have any correspondence with any other coal claimant there?—A. No, sir.

Q. Or any other claim owner, or did you see any other claim owner and tell them you had sold your claim or were going to sell it?—A. Why, yes, after I sold it, I seen some of them and told them I had sold it.

Q. Prior to the time you sold it, did you notify any of them?—
A. No.

Q. Did you, after selling that claim, pay any part of the money you received from it to Mr. Clarence Cunningham?—A. No, sir; I have not seen Mr. Cunningham or had any word from him until I got here Wednesday—or Tuesday, I think it was.

Q. Were you under any obligation or promise whatsoever to pay him any part of it?—A. No, sir.

Q. How did you come to come here and attend this hearing, Mr. Schofield?—A. Well, I was notified by Mr. Winchell from Minneapolis that they would like to have me come up here and give my testimony.

Q. He is the man with whom you dealt when you made the sale of your claim?—A. Yes, sir.

Q. What arrangement or understanding, if any, did you have with Mr. Winchell about coming up here?—A. Why, I wired him back I would come.

Cross-examination by Mr. SHERIDAN:

Q. How old are you, Mr. Schofield?—A. Well, sir, I was born on the 10th day of April, 1839.

Q. Now, Mr. Schofield, in what business were you engaged at the time when you first met Clarence Cunningham, and discussed the taking up a claim in Alaska?—A. I was in Los Angeles, I think, at that time I had bought some land south of Los Angeles, between Los Angeles and Gardina, and was subdividing and developing water on it. I think that is what I was doing at that time.

Q. On what scale were you engaged in that business?—A. Well, there were three of us partners. We bought a tract of land of 676 acres of land, and we subdivided it into acreage, and sunk artesian wells on it and developed water for domestic purposes and irrigating purposes.

Q. Were you engaged in any other business there at that time?—A. No, sir; I was buying a little property once in a while, real estate.

Q. You have continued those business concerns down to date?—A. No, sir; I developed that water, and finally traded my interest in the land to my partners for the interest in the water. My health failed me so I could not attend to it, and I gave it—I owned all the stock but five shares, and I turned it over to my son, and since then I have had nothing to do with it.

Q. At the present time, are you engaged in any business?—A. No particular business. I have some property in Los Angeles. I have quite a few dollars out at interest.

Q. Now, give us, in your own words, Mr. Schofield, just in the narrative form, the scope of the interview or discussion you had with Mr. Cunningham on the occasion of your first meeting him in Los Angeles, Cal.—A. Well, sir, as I said before—you mean when I first met him?

Q. Yes.—A. Not before I met him—my going up to Wallace?

Q. The very first time you met him in connection with these coal claims.—A. Well, I met him in Los Angeles on the street, and I told him I heard that he was in Alaska looking after some coal properties or claims, and he told me that he was—he had been up there, and I was pretty glad to see him. I have known him ever since he was a boy, and he always seemed to think a great deal of my wife and me, and we invited him down to the house. The only talk I asked him about the coal claims, and he told me he had been up—told me—I could not tell you just as he said it—and I asked him if there was not a chance for me to get a claim, and he said yes; that he would like to have me take

a claim, and he would like to have his friends that he knew interested, and I asked him how much it would cost, and he told me he could not tell exactly just then, and he figured for a few minutes and said about \$1,600 to pay the expenses. There had been a good deal of money expended, he said, and it was a hard place to get into, and I says, "All right; I will take a claim." And he was going on—he came there to be married at that time, and was going to take his wedding trip east, and I says, "Now, when you get back and get ready for that money, why let me know, and I will send it to you."

Q. Now, in regard to that \$1,600 he spoke of, was that to cover the expenditures already made?—A. Already made; yes.

Q. You don't mean that was the \$1,600 eventually paid as a government price for the land?—A. Oh, no; that was our expenses that had been made on the claims.

Q. I see.—A. Well, when he came back to let me know, and I would send him the money, I told him, and so—I could not tell you whether he had got to Seattle or whether just before he got to Seattle, he told me when he was up there for me to send the money, and he sent me a power of attorney to sign for him as my agent to locate this claim, and I signed the power of attorney and sent him \$1,600 to Seattle.

Q. You had a good deal of confidence in Clarence Cunningham's ability as a business man, did you not?—A. Yes; I known Mr. Cunningham ever since he was a boy, and have had a good deal of business with him, and he looked after a claim for me, and I have been connected with him, and I have all the confidence in the world in him.

Q. And that confidence continues to the present time, doesn't it, Mr. Schofield?—A. Yes, sir.

Q. Now, as I understood you, the next conversation that you had with Mr. Cunningham was at the meeting held in Spokane on the 15th day of May, 1907?—A. Yes; I had seen him prior to that time.

Q. Did you have any particular discussion with him concerning your claim that you can recall?—A. No, sir; none at all. I came here, and there was these other claimants; these other claim owners was here, and we had this meeting, and I was in a hurry, and I did not stay here only just for the meeting; I went up to Wallace.

Q. What was discussed at this meeting? Just give it briefly.—A. Well, as near as I can recall, we discussed the development of the coal land.

Q. In what way?—A. That they would have to get a railroad in there to market the coal, and that they ought to make some arrangement for to develop it, and it was discussed in this way that the claim owners were not able to build a railroad in there, and that they had to make arrangements with some other parties—see what they could do with some other parties to build a railroad.

Q. And who were the parties with whom they proposed to do business?—A. Well, I think the Guggenheims were mentioned, but I don't really know.

Q. Did you ever receive any communication subsequently as a result of this meeting?—A. No, sir.

Q. That is, as I understand you, those were the only two occasions on which you had any conversation with Mr. Cunningham concerning these claims?—A. Yes; did not see him only those two times.

Q. And he afterwards—you afterwards stated that you saw Mr. Finch in Los Angeles. When was that?—A. I have seen—Mr. Finch comes down there most every winter for his health, and I generally meet him, and we talk over old times—we went into the Coeur d'Alenes in the early days, and I could not say—I don't know as we ever talked about this coal business.

Q. You can not recall the time?—A. No, sir; I could not.

Q. Did you have any correspondence with Mr. Finch, of Spokane?—A. No, sir; never; never had any correspondence with anybody.

Q. Are you at the present time interested financially in any concerns with any of the entrymen not concerned in this inquiry?—A. No, sir.

Q. Have you been at any time since you took up this claim in Alaska?—A. Yes; when we first took up the claim I was with Finch & Campbell.

Q. In what way?—A. Well, we owned the Monmouth mine in the Coeur d'Alenes, and they had an interest in it, and I had an interest, but it was run—it was never capitalized, it was never stocked, and they bought an interest in the mine afterwards; one of our partners died, and they bought that interest.

Q. And were those the only members of that group of entrymen with whom you were financially interested?—A. Yes, sir.

Q. Mr. Schofield, did you, at any time, subsequent to making that location on the coal claim in Alaska, receive any statement of accounts or expenditures of money in connection with that claim from Mr. Clarence Cunningham?—A. Yes, sir.

Q. I now hand you Government Exhibit No. 5, and I will ask you to state if at any time you received such a statement from Mr. Cunningham; and if so, when?—A. Yes; I think I received that.

Q. I hand you Government Exhibit No. 6, and ask you to state if you ever received such a statement from Mr. Cunningham; and if so, when?—A. Well, I could not swear whether I ever received that or not, but I presume I did.

Q. You could not say approximately the year?—A. No, sir; I could not. These statements, I will say, I always looked at them, if I got them, and if he drew on me for money I always sent him the draft, and I never paid any attention to it.

Q. Did you preserve any such statement if you received it?—A. No, sir; I have not. After I sold my claim here I had no use for them things, and I sold my home, my wife and I went to live in the hotel, and we could not have these papers, and I just destroyed them; I had no use for them. I have got nothing.

Q. I now hand you Government Exhibit No. 7, which is the report—which is a report of H. L. Hawkins on this group of entries, and ask you whether you ever received such a statement or report; and if so, from whom?—A. Yes, I think I received that; I feel sure I did.

Q. You can not recall when?—A. No, sir; I can not. I can not tell you the date.

Q. I now hand you Government Exhibit No. 8, and ask you if you ever received such a statement from Mr. Cunningham; and if so, when?—A. Well, I suppose I received it, but I could not swear to it. For I have not got it. I did not pay much attention to it.

Q. I hand you Government Exhibit No. 9, and ask you to state if you ever received such a statement from Mr. Cunningham; and if so,

when?—A. Yes, I received it, I guess; and I guess he drew on me at the same time.

Q. Do you recall when you received it?—A. No, sir; I could not tell.

Q. You do recall, however, Mr. Scofield, as I understand you, having received several such statements?—A. Oh, yes; I received several, I know. Whenever he wanted money I always got some kind of a statement or draft.

Q. Now, Mr. Scofield, in the interviews you had with Mr. Cunningham, as already described by you in your testimony, and after this meeting held in Spokane, you did not go into any details or discussion with reference to the feasibility of operating this property independently?—A. No, sir.

Q. You just merely had, on this latter occasion, a sort of general discussion as to a plan of operating and developing the property?—A. Yes, sir.

Q. Did you have any discussion with anybody prior to that time for the same purpose?—A. No, sir.

Q. About how much money did you give to Mr. Clarence Cunningham for the purpose of carrying on this work on this claim up to and including the time of issuance of final receipt; just roughly?—A. Well, I could not tell you exactly, but I think up to that time the entire amount in all was \$4,000 or somewhere in that neighborhood; might be a little more.

Q. Through what bank or banks did you transact this business?—A. Well, I could not tell all of them because he drew on me in every bank in Los Angeles, I guess. I would get a notice from one bank and then I would get a notice from another, so many different ones I could not tell you.

Q. About how frequently in a year did he call on you for money?—A. Well, I would presume one or twice. I don't think it was over twice a year, it might have been—but once anyway.

Q. Then, as I understand you, based upon your personal acquaintance with Mr. Cunningham and your confidence in him you advanced him this money for the purpose of carrying on work in Alaska and had no further discussion with him or any other of the entrymen as testified by you here to-day?—A. Yes, sir.

Q. Did you at any time make any affidavit other than those already presented to you by counsel?—A. No, sir.

Mr. GRAY. Well, I did not present it as an affidavit. The citizenship—

Q. Well, I guess, I will include in that statement the affidavit appearing in the original papers.—A. Well, there are three of them, that is citizenship and then this power of attorney and the first affidavit, I forget what it is.

Mr. GRAY. You received those in the original papers?

Mr. SHERIDAN. Yes, the original entry papers.

Q. Did you ever execute an affidavit for any agent or representative of the General Land Office concerning the purpose of jointly developing or operating this claim?—A. No.

Mr. HUGHES. You do not now refer to the Love affidavit?

Mr. SHERIDAN. No.

Mr. HUGHES. That might be considerably broader than your question.

Mr. SHERIDAN. I mean other than those already referred to.

Mr. HUGHES. Yes.

Q. Now, what was the nature of the arrangement you had with Mr. Clarence Cunningham concerning his individual expenses for his work?—A. Well, the only arrangement I had with him was that he was doing this work up there and I says, "Well now, whenever you want any money call on me and I will send it to you." I knew he used to draw on me pretty often and I would send the money.

Q. Was it your understanding that he was spending all of this money that he received on the development of the claims?—A. Why, the development of the claims, yes, and expenses. He was to have a salary, I suppose.

Q. What was your understanding concerning the salary?—A. I understood he was to have \$200 a month.

Q. How did you arrive at that understanding?—A. Well, I don't know whether—I would figure up his expense account in some of these bills, I think, in his statement.

Q. Did he, in any statement he furnished to you, set out an item covering salary to Clarence Cunningham?—Well, now, I could not say whether he did or not. I could not tell you about this \$200 business whether he told me or some one else told me he got \$200 a month.

Q. I now call your attention to Government Exhibit No. 3, and especially that part which purports to be a copy of what is known as the Cunningham journal, and I especially invite your attention to page 1, in which the statement is made, apparently by Clarence Cunningham, that in consideration of his services in securing these lands for the various entrymen that he is to receive a one-eighth of the stock to be issued in consideration of such services.—A. I don't know. I never heard of such a thing as that. I never seen him to see any journal, only at that one time that I met him there and in this 1907 here.

Q. Did you see the journal at that time?—A. No, sir; I never seen it, never seen any papers as to a one-eighth; I don't know anything about it. I never bargained to give him one-eighth, and I was never talked to.

Q. Did you doubt Mr. Cunningham's statement?

Mr. GRAY. I object to that—hold on—

A. I don't know what was done. I never had any agreement with him—

Mr. GRAY. Hold on, Mr. Scofield—

A. I don't know what has happened with the others—

Mr. GRAY. Wait. I desire to object to that as being entirely incompetent and immaterial.

The COMMISSIONER. He has answered the question.

A. I know I never had any agreement with him to give him anything more than his salary. He had a location there, and I supposed he wanted to keep that up, and I expect when he made out these reports I see, he always kept his out, I don't know what else he got.

Q. Now, Mr. Scofield, I call your attention to what is known as the Love affidavit in the original entry papers in evidence under the stipulation already, and I will ask you a question as to how that came into your possession and how you came to sign it?

Mr. HUGHES. Did you call his attention to the exhibit number, whatever exhibit it is, when you are asking him the question?

Mr. SHERIDAN. It is not one of the exhibits that has a number. It went in under the stipulation.

The COMMISSIONER. It is a part of the entry papers.

A. How I came to get this?

Q. Yes. How it came to you, into your possession?—A. I got it by mail.

Q. From whom?—A. From Mr. Clarence Cunningham.

Mr. HUGHES. You are referring to the so-called Love affidavit for identification?

Mr. SHERIDAN. Yes.

Q. Have you preserved the letter which accompanied this affidavit from Mr. Cunningham?—A. I do not think I have got a letter in my house or anywhere else that has ever come from him. As I told you, I sold my home, and we moved into a hotel, and we broke up and these old letters was no account and I destroyed them.

Mr. HUGHES. You mean you broke up housekeeping?

A. Yes; we broke up housekeeping.

Q. Did you have any correspondence with Mr. Scofield asking him anything about this affidavit before its receipt by him?—A. Mr.—Mr. Cunningham, you mean?

Q. Yes; Mr. Cunningham.—A. No, sir; I did not.

Q. So you received it without anything further than the letter accompanying it to inform you of its purpose?—A. Yes.

Q. And you re-sent it to Mr. Cunningham?—A. Yes.

Q. In Alaska?—A. I think in Seattle.

Q. I now call your attention to Claimants' Exhibit No. 3 setting out the minutes of the meeting held in the office of Finch & Campbell, in Spokane, on May 15, 1907. Now, will you give us, in your own words, anything you know about such meeting [handing paper to witness]?

Mr. GRAY. Just read it over first, Mr. Scofield.

(Witness examines paper.)

A. Well, it was discussed there at that meeting, these lands were; I did not really like it myself, and I thought it was giving the Guggenheims a little bit too much.

Q. Did you have anything to say about it at that time?—A. I don't know that I did. When I am at these meetings I never talk any, because I can't talk, and therefore I don't suppose I said anything, only privately with some of the coal-claim owners who were there; I made my objections. I could not say who they were, but I did not make any public demonstration, I don't think.

Mr. HUGHES. By public demonstration you mean by getting up and expressing your views before the meeting?

A. Yes. I didn't do that.

Q. You say you did not approve of these arrangements?—A. I did not approve of them because I thought it was giving the Guggenheims too big an interest. We were letting them have it too low, and we could sell out our claims, as I did mine, and get as much money out of it as I had out of it, and I had no further bother with it.

Q. I now hand you Government Exhibit No. 10, that has been referred to in evidence as the Guggenheim memorandum or option, at Salt Lake City, and I will ask you if you received a copy of that, and if so, from whom?—A. Well, sir, I don't know whether I did or not. I guess, though, I did, but I could not swear to it. I could not swear

whether I did or not. I tell you now about this claim business; I done with that as I have with mining claims for the last thirty years; I take chances, and if I put up any money and I win, it was all right; and if I lose it was all right; and I never give this much if any thought, for I have lost twice as much money or three times as much as I had in that, in other claims, and it never worried me very much.

Q. Do you know anything about any deeds having been placed in escrow?—A. Yes, sir.

Q. Concerning this property?—A. Yes.

Q. Tell us what you know about it.—A. Well, I got a letter from Mr. Wakefield, I think that is the firm name, calling on me to make out a deed to some trust company here in Spokane and give me the details and send it to me, and wanted me to send it to him, and I did so. I made out a deed. I was sorry after I had done it.

Q. About when was that?—A. I think that was along in June or July, 1907, probably.

Q. Subsequent to this Salt Lake City meeting?—A. No—yes; I guess after the Salt Lake meeting. Yes. It might have been before. I don't know whether it was after this meeting here in Spokane on the 15th of May, and that is the time I probably received that, that he just showed me that in this statement because I wrote Mr. Wakefield and withdrew my deed, and he sent it to me and I tore it up. I didn't like the style of it, so I wrote him and asked him if he would not send me my deed, and he did, and I took and tore it up.

Mr. HUGHES. The style of what?—A. Of that agreement that they wanted to go into with the Guggenheims.

Q. Do you recall in a general way what the provisions of that deed were?—A. At the time—no; I could not tell you; only it was to be held in trust some way so that we could not have done anything with the property; and there was to be stock issued, or bonds issued, or something of that kind; I suppose that was it—why I suppose it was done. They was scattered so that it was hard for them to do anything to develop these claims; it might have been taken for that so it could be got together. That is all I know of it. I know that I got sick of it right away and withdrew mine.

Q. Do you know of your own knowledge how many of these deeds were placed in escrow?—A. No, sir; I do not know whether there was any others or not.

Q. Did Mr. Wakefield, as near as you can recall, say anything in the letter about how many others had deposited deeds?—A. No, sir.

Q. From the time you located your claim in Alaska and down to the time of final receipt did you ever consult any attorneys in connection with that claim?—A. None.

Q. I now show you Government Exhibit No. 29, which contains the articles of incorporation of the Bering River Railroad Company, and I will ask you to state what you know about the organization of that, if you know anything.—A. I don't think I ever saw that before [examines paper]. No; I never saw that that I know of.

Q. Did you ever have any correspondence or interviews with any of the entrymen now concerned in these claims concerning such a proposition set out in that exhibit?—A. No, sir; that is news to me, I don't know anything about that.

Q. Now, in Claimants' Exhibit No. 4, Mr. Scofield, I notice that you were present by proxy at the meeting held in Spokane on July 16, 1907; is that correct?—A. Well, I will tell you about that; I

got that letter from Mr. Burbidge telling me there was going to be a meeting in Spokane and wanted me to send him my proxy, and I sent it, and I saw Mr. Burbidge after that and talked with him about it, and I could not tell you where I seen him, but I seen him somewhere, and he told me my proxy did not get there until after the meeting and it was no good, and I asked him if he got it, but it was after they held the meeting. I did send him a proxy.

Q. Did you subsequently receive notice of that resolution passed or action taken at this meeting?—A. No, sir; I never received any.

Q. Did you at any time subsequent thereto have such notice of what transpired that enabled you to either ratify or disapprove of what had been done?—A. No, sir; I never received any.

Q. Have you any interests in Alaska?—A. No, sir; no other interests.

Q. As I understand you, you have never been in Alaska?—A. Never been in Alaska; no, sir.

Q. Now, what induced you to sell out that claim of yours and dispose of it?—A. Well, I will tell you. I was pretty sick last winter. I was in the hospital. I did not know whether I was going to get out or not; and about the time I did get out of the hospital I got a letter from Mr. Winchell, and he asked me what I would take for my claim, and told me to wire him, and I did so. I made up my mind, probably, that I might not live very long and I would like to get my matters in shape so that my estate can be settled up without any trouble, and the way they were holding back on this patent I thought I would never see it, and I just thought I would take the money when I could.

Q. The money which you furnished Mr. Cunningham for the purpose of carrying on the work in Alaska was your own funds?—A. Well, I think so. I never borrowed any.

Q. You never borrowed any for that purpose?—A. No, sir.

Q. In what form do you recall did you convey this property to Mr. Winchell?—A. I gave him a deed for it.

Q. A deed?—A. Yes, sir.

Q. Do you know if it is what is known as a quit-claim deed?

Mr. GRAY. In due time, Mr. Sheridan, we will present that, so that you will have all the information possible on that. It is rather immaterial, but we will do that.

The COMMISSIONER. Is that all?

Mr. SHERIDAN. Just a moment.

Q. Mr. Scofield, in your conversation that you had with Mr. Clarence Cunningham at that time or at any time after your first meeting with him, did you learn anything from him concerning that tract of land, which he located for you in Alaska, having been formerly held by another person through the agency of Clarence Cunningham?—A. No, sir.

Redirect examination by Mr. GRAY:

Q. You spoke of having learned that Mr. Cunningham received a salary of \$200 a month. You may have acquired that information from some of these statements that he sent, Mr. Scofield?—A. Yes. I don't know how I did get that.

Q. You said before you did not know whether it was from conversation with him or conversation with somebody else, and I think it was in this statement, but, then, I don't know.

ARTHUR D. JONES, a witness produced by claimants, being first duly sworn by the commissioner, testified as follows, to wit:

Direct examination by Mr. GRAY:

Q. State your full name, your residence, and your occupation.—A. Arthur D. Jones; I live in Spokane, Wash.; I am in the real estate, renting, insurance, and loan business.

Q. How long have you lived in Spokane?—A. Twenty-two years.

Q. Do you know Clarence Cunningham?—A. I do, sir.

Q. You are the same Arthur D. Jones who is the owner of the Calais coal claim?—A. Yes; I am.

Q. Coal entry No. 29?—A. Yes, sir.

Q. When did you first meet Mr. Clarence Cunningham and under what circumstances?—A. I met Mr. Clarence Cunningham at the Hotel Spokane in April or May, 1903.

Q. Who introduced you?—A. Mr. Frank Stevens.

Q. What conversation did you have at that time?—A. Why, we talked principally about this—Mr. Cunningham's visit to Alaska, about the coal claims that he had located there or was about to locate, and about Finch & Campbell having him attend to locating some claims for them.

Q. Was there any discussion at that time concerning the location of a coal claim for you by Mr. Cunningham?—A. There was.

Q. If so, state what it was.—A. Why, Mr. Stevens and I had been doing some business together, in fact, considerable for—and he came to my office and said Cunningham was an old-time friend of his and that he was going—he thought it would be a good thing for me to let Cunningham stake out a coal claim for me, the same as he was doing for Finch & Campbell; and I said to him I was not in the mining business and I had never made any money where I had gotten in, and I didn't want to get into any mining business, but he was a very good friend of mine, and talked to me about it until I finally told him I would go up to the Hotel Spokane and talk to Cunningham, and we went up there and I talked to him and I told Cunningham he might act for me in the matter.

Q. What understanding or agreement, if any, did you have with Mr. Clarence Cunningham at that time?—A. I did not have any understanding or agreement with him, except that I expected to pay him for any services he rendered for me. It was a matter of what expense he was put to in attending to the business; there was no specific amount as to that which would be stated at the time. In fact, I knew that Frank Stevens was an all right fellow, and our relations had been very congenial and satisfactory and he said Cunningham was all right and I did not worry about the details very much.

Q. At that conversation was there any agreement or understanding between you and Mr. Cunningham or with anyone else under or by the terms of which you were to hold any interest or part of the claim which was located for you or which was to be located for you for the benefit of Mr. Cunningham or anyone else?—A. No, sir; there was nothing of that kind whatsoever; no talk about it, no understanding, no suggestion of the kind.

Q. Subsequent to that time did you execute a power of attorney?—A. To Mr. Cunningham?

Q. Yes.—A. I did.

Q. I refer now to a power of attorney which was acknowledged on the 11th day of September, 1905, before F. S. Kiesow, a notary public.—A. Yes.

The COMMISSIONER. Is that a part of the entry papers?

Mr. GRAY. Yes; a part of the entry papers.

Q. And thereafter and on or about the—at the same time which you executed that power of attorney did you execute an affidavit which is attached to that power of attorney before the same notary public?—A. That is my signature. I don't remember exactly what I did execute, but I know there is a power of attorney. Yes; I executed that paper.

Q. At the time you executed that power of attorney, or at any time prior thereto, had you made any agreement, or had you any understanding, with Clarence Cunningham or any other person by the terms of which your coal claim, or any interest in it, or any part of it, should inure to the benefit of anyone else other than yourself?—A. No, sir.

Q. Had you at any time any promise, any understanding, or agreement, or were you under any promise or obligation that you would join your claim or any interest in it for the purpose of working or mining it with any other claim?—A. No, sir. I knew hardly any of the other entrymen; who they were; hardly knew any of these 33 men, outside of Finch & Campbell.

Q. Did you thereafter and on the 30th day of January, 1906, before Mr. F. S. Kiesow, swear to an application for patent, which is found in the application papers which I now hand you?—A. I did.

Q. I call your attention to the following language in that affidavit:

That I am now in the actual possession of said mine through my duly authorized agent, Clarence Cunningham, of Kayak, Alaska, who I have heretofore appointed as such for the purpose of making the location record and entry of said coal lands for me, and in my name and through him I make the entry for my own use and benefit, and not directly or indirectly for the use and benefit of any other party.

Was this statement true at the time you made it?—A. It was.

Q. Mr. Jones, referring to that date, had you ever prior thereto had any understanding, or did you on that date have any understanding or agreement with any person or persons, any association, company, or corporation, under or by the terms of which your coal claim or any part or interest thereof should inure to the benefit of such other person, association, or corporation?—A. I did not.

Q. Did you have any understanding concerning this coal claim at all prior to that time; that is, how you should develop or work it or mine it?—A. No.

Q. Did you receive from a man by the name of Love an affidavit at any time for you to execute in connection with this application for patent?—A. I did.

Q. What did you do with that affidavit?—A. I signed it and sent it back to him just like I did all the other affidavits I got from Cunningham.

Mr. GRAY. I do not find that Love affidavit in the papers here. Are you willing to agree that such affidavit was made by Mr. Jones and that we may use one of the others and consider it the same as if it were really in evidence?

Mr. SHERIDAN. I can not make the agreement that it was made by him, but I will rely upon the statement of the register and receiver which sets out the papers that are supposed to be contained in that

jacket, and I believe it is shown as missing, but I am not going to make it an issue, in as much as all these Love affidavits were identical but we will agree that these are exactly the same as it.

Q. You returned that to Mr. Love?—A. Yes, I did. I remember about it. I did not make any changes in any of the affidavits sent me. I signed them as they were sent me.

Q. Is this a copy of a letter to Mr. Love which you wrote?—A. Yes; that is the letter, I guess.

Q. That is the letter?—A. Yes.

Q. Pursuant to that letter you sent and returned that affidavit to him?—A. Yes, sir; that is my memory of it. I sent, I think I sent, everything that he sent me.

Mr. GRAY. I offer in evidence the letter from Mr. Love to Mr. Jones; it is offered simply for the purpose of supporting Mr. Jones's statement concerning this matter in as much as I guess the affidavit is apparently missing from the files.

The COMMISSIONER. It may be admitted and marked Claimant's Exhibit 5.

(Paper marked Claimants' Exhibit 5 admitted in evidence.)

Mr. SHERIDAN. I offer no objection to this.

Q. Can you say from memory whether or not the affidavit was substantially in the form of the affidavit of Michael Doneen which I hand you. Look it over.—A. I don't believe I know. I can read it over.

Q. But you can not tell?—A. No; I don't think I could tell what it was in detail.

Q. Do you recall the time when you paid the United States for your land, Mr. Jones?—A. Why, I think it was in the spring of 1907.

Q. I hand you duplicate receipt, final certificate, dated April 23, 1907.—A. That is when I got my receipt and sent the money.

Q. How long before had you sent the money prior to that time that you got the receipt?—A. It was only a short time, as I recall it.

Q. Only a short time before?—A. Yes.

Q. Referring you to that date when you had paid the Government your money and received this final certificate, had you ever, prior thereto, had any agreement or contract with any person or persons under or by the terms of which this coal claim of yours in Alaska or any part or interest therein should inure to the benefit of such other person?—A. No, sir.

Q. Or association?—A. No, sir.

Q. Had you made any contract or contracts whatever, or did you have any understanding concerning what you would do with that claim when you secured title thereto from the United States?—A. No, sir; I never had any conferences with anyone about it.

Q. Any what?—A. Never had any conferences with any holder or any claimant of any other claims; that is, these 33 men, about it.

Q. Were you under any obligation or promise whatever to consolidate or combine it with any other claim or claims for the purpose of mining or working it?—A. No, sir.

Q. Did you ever discuss that with anyone prior to that time?—A. No, sir.

Q. Mr. Jones, after you met Mr. Clarence Cunningham on that first occasion when he was introduced to you by Mr. Frank Stevens in the Spokane Hotel, how long was it before you saw him again?—A. Well,

I don't know just how long; but my memory is I only saw him twice until after I got my final receipt. Once in the barber shop on Post street, and another was on Riverside. He was coming up the street with his wife and I took him in my automobile and brought him up with me. He was never in my office to talk with me.

Q. Did you have any conference with him about it in the barber shop and ask him how things were going?—A. Yes, sir; I asked him how things were going in Alaska and he gave me some answer, but I don't remember what it was.

Q. Nor in the automobile?—A. Oh, his wife was along and we talked about the weather. We did not talk about anything material.

Q. From the time you first saw Cunningham and authorized him to make a location for you in Alaska of your coal claim, until you received your final certificate, had you had any conference or meeting with any other person or persons who had adjoining coal claims?—A. No, sir; I have not.

Q. Concerning the same?—A. No, sir. The only thing I can remember about is going up to Finch & Campbell's office after getting a draft and asking them if they had paid their draft, and I thought if they had I would pay mine. That is the only talk I had about it. I went up there to their office at one time to see some samples of coal R. K. Neill had brought down. I think that is the whole talk about it.

Q. Do you know where you, or from whom, you received this application for patent you swore to?—A. That application for patent, I received that—Mullen, wasn't it—application for patent. No, I don't believe I know.

Q. To refresh your recollection, did you receive it from Mr. Cunningham at any time?—A. Yes; I received it from Mr. Cunningham.

Q. Did he hand it to you or mail it to you?—A. Mailed it to me.

Q. Your memory is clear on that, is it?—A. Yes.

Q. And you executed it and returned it?—A. I did.

Q. Mr. Jones, I call your attention at this time to the minutes of a meeting of the owners of coal claims held on May 15th, 1907, marked "Claimants' Exhibit 3." I wish you would read that [handing witness paper]. I know the general trend of this, I guess.—A. I have not read it every word.

Q. Were you present at that meeting?—A. Yes, I think I was—yes, I was.

Q. Subsequent to that meeting, did you ever attend any other?—A. The meeting of the 16th of July, 1907, attached there, at which other owners of coal claims were present. Yes, on the 16th of July, I think; yes.

Q. Are those correct copies of the proceedings, as you recall them?—A. Well, I would not know whether they were correct or not in every detail. There might be some details there not absolutely correct, but in a way, they are.

Q. Did you examine this Exhibit 4?—A. The first conference I ever attended of this nature—I didn't understand—is there something here. I don't understand.

Q. Referring to Claimants' Exhibit 4 of date July 16, 1907?—A. I did not understand that all members were to ratify any action taken by the committee. I did not understand that was the case.

Q. At that meeting, you say you did not understand that the members who were present agreed to ratify any action taken by this

committee?—A. No, sir; we were not bound to any action taken by the committee. That is not true.

Q. What was your understanding?—A. Why, the way I understand it was: Mr. Cunningham—these Guggenheim fellows had been talking to Mr. Cunningham, and as a matter of courtesy this committee was appointed to talk with them some more. That was the proposition.

Q. Did you agree at that time, or at any time, to be bound by the action taken by that committee?—A. No, sir; I did not.

Q. Did you ever agree to any action which they did take?—A. No, sir.

Q. Upon the return of that committee from Salt Lake, consisting of Mr. Campbell, Mr. Cunningham, and Governor Moore, did you see the memoranda of proposal which they had entered into there?—A. I did.

Q. What action, if any, did you take in connection with that?—A. I didn't do anything about it.

Q. Why not?—A. Why, because I did not want to. I was not willing to enter into any agreement like that, and in fact there hadn't anything been proposed to me that I was willing to do or wanted to do with reference to the matter at all. At one of these meetings they wanted to put me on a committee and I refused to act.

Q. Did you make any agreement on the 16th of May of the meeting on the 16th of July or at any time between those dates as to what disposition you would make of your coal claim?—A. I did not.

Q. Did you make any agreement subsequent to the visit of these gentlemen to Salt Lake as to what you would do with it?—A. No.

Q. And you say you declined to participate in it or carry out such agreement?—A. I did.

Q. Now, Mr. Jones, did you understand—or, state what that understanding was a little more fully, Mr. Jones, as to the power and authority which this committee had in going to Salt Lake.—A. Why, they did not have any authority to bind me to any agreement. I did not understand that they had authority to bind any of the parties present to any agreement. It was a matter—I did not understand there was any particular ground to bind any of us to anything. In fact, I know there was not any.

Q. I wish you would state whether or not on or prior to the 15th of May, 1907, the date of that meeting, you had ever discussed with the other entrymen the question of the joint operation or the joint mining of your claim with others?—A. I did not.

Q. Did you have any understanding of any nature whatsoever with reference thereto prior thereto?—A. No, sir; I never had any talk with any of them, unless we had street talk, passing along the street, or meeting on railroad trains, or something like that. Never had any conference with a solitary one of them prior to this May 15th or prior to the 23rd when I got my receipt—the 23rd of April, 1907, when I got my receipt.

Q. Now, Mr. Jones, did you ever make any deed for your claim?—A. I did not; no, sir.

Q. To anyone?—A. To no one.

Q. I now call your attention to Government Exhibit 28, and particularly to the last page thereof, and ask you if that is your signature?—A. That is my signature.

Q. I desire, Mr. Jones, that you shall examine the affidavit made by you on the 23d of April, 1908, and sworn to by you before F. G. Kiesow.—A. Yes, sir, that is my signature, and I see they have got it numbered 12 Maxine claim. That is not my claim.

Q. Referring to that, Mr. Jones, where did you get that affidavit?—A. Had it sent to me by Mr. Glavis.

Q. What did you do when you got that affidavit?—A. I signed it and handed it to Mr. Kiesow to take the acknowledgment, and I wrote a letter to Mr. Glavis and sent it back to him.

Q. State what consideration you gave to the affidavit of Mr. Cunningham, to which this was attached.—A. Why, anything that the land office fellows sent me that was indorsed by Cunningham, I signed.

Q. State if you examined that affidavit of Mr. Cunningham carefully to ascertain what was in it before signing that affidavit?—A. I did not read it very carefully. I probably read it. I could state I did read it, especially the amount of work part of it. I read that through and I may have read the other, too.

Q. In this affidavit, made by you in the State of Washington, county of Spokane, I call attention to the following: "Arthur D. Jones, being first duly sworn, on oath deposes and says: I am the identical person who made Alaska coal land entry No. 12, known as the Maxine claim, embraced in land survey No. —." Is that correct?—A. No, sir; my claim is No. 7. It is the Calais. I don't know how to pronounce it, but C-a-l-a-i-s is the way it is spelled.

Q. How did you happen to swear to the affidavit as being the owner of the Maxine claim?—A. I guess I couldn't have read it thoroughly.

Q. And I am acquainted with all of the entrymen—I will ask you if that is correct?—A. Well, I am not acquainted with—at that time I was not acquainted with more than one-fourth of them. I am acquainted with more of them now. I met them more in the last few months, particularly another Mr. Jones there; I never knew him until about six months ago.

Q. Now, I call your attention to the following language in this affidavit: "I know of my own personal knowledge that the statements made in the foregoing affidavit are true in so far as they pertain to the Guggenheim syndicate and the understanding existing among ourselves as to the disposition of our claims. I know positively that the Guggenheims had nothing to do with our claims whatsoever. We have the understanding among ourselves that when title was secured we would form a company and combine the entire group, since conditions are such that one claim could not be profitably mined, as anyone familiar with coal mining appreciates." Now, what did you refer to there in connection with the statements that there had been an understanding?—A. Why, as I told you a minute ago, as I testified in answer to another question, I always have had, and do now—anything that the United States land officials sent me that was indorsed by Cunningham I executed and sent back.

Q. I call your attention, Mr. Jones, to the last paragraph of the minutes of the meeting of May 15, 1907, in which it is said, "Thereupon, upon motion of Mr. Sweeny, and seconded by Mr. Finch, the chairman was authorized to appoint a committee of five to organize a corporation for the purpose of acquiring the coal claims owned by those present, and those of such other coal claim owners as might desire to join the corporation and secure deeds to mining claims and

issue receipt and take all necessary steps for the organization of the company for the transaction of business. That was at a meeting at which you were present, wasn't it?—A. Yes, sir; I was present at this meeting.

Q. Have you ever had any conference or discussion or understanding of any kind prior to that time with relation to any such matter?—A. No, sir.

Q. Mr. Jones, now referring to the language in this affidavit which you made before Mr. Kiesow on the 23d of April, in which you say that you have understood among ourselves when title was secured we would form a company and combine the entire group, etc., I will ask you if you referred to any other understanding than the one at the meeting of May 15, 1907; and, if so, I want you to state what understanding it was?—A. No; that is the only understanding, and I don't call that an understanding. But there was no other at all; no other excuse for such statement.

Mr. GRAY. If your honor please, I think that is all. There may be one or two questions I may want to ask Mr. Jones about some other matters in the morning. I did not have an opportunity to any more than just briefly discuss this matter with Mr. Jones for about three minutes the other day before he went on the stand, and I have not had an opportunity to since, and there is one matter that may require one or two questions, if that is satisfactory to counsel.

Mr. SHERIDAN. That will be satisfactory to us.

The COMMISSIONER. Very well.

And thereupon the further hearing of this inquiry was adjourned to 9.30 a. m., December 4, 1909, at 9.30 a. m.

DECEMBER 4, 1909—9.30 A. M.

INQUIRY RESUMED.

Appearances: Hon. William J. McGee, United States special commissioner; Mr. James M. Sheridan and Mr. William B. Pugh, counsel for the Government; Mr. E. C. Hughes and Mr. John P. Gray, counsel for the claimants.

ARTHUR D. JONES on the stand.

Cross-examination by Mr. SHERIDAN:

Q. How old are you?—A. I was 50 years old on the 25th day of last September.

Q. You became interested in this coal claim which you had taken up for you in Alaska, as I understand you, some time in April or May, 1903?—A. Yes, sir.

Q. What business were you engaged in at that time?—A. The same business that I am now; and my office was in the Empire State Building.

Q. What business is that?—A. Real estate, loans and renting, and insurance business.

Q. You have about how many years been in that business?—A. I have been in that business for twenty-two years in Spokane.

Q. I understood you to say you met Mr. Cunningham through a Mr. Frank Stevens?—A. I did; yes, sir.

Q. Who is Mr. Stevens?—A. Mr. Stevens was a particularly good friend of mine. He and I had some business relations together that

turned out very nice in lands, farming lands, and at some profit, and I knew him in that way first and we became very friendly.

Q. Was Mr. Stevens in any way interested in these claims in Alaska?—A. He was in the beginning, but Mr. Stevens died in September, 1903.

Q. What interest did he have, if any, in the claim now under inquiry?—A. Why, the first money I paid; we had a common account, and I had the money and some of it was his. The first \$750 which was paid, and I think also the next payment of \$250, I think it was \$250—\$250.40—right close to \$250.

Q. Now this was the same claim you have at the present time in which you are interested?—A. Well, that—I did not understand that our claim was located—

Mr. GRAY. Just a minute. I desire to object to that, for the records themselves show that the application for patent was based upon locations which were made subsequent to that time.

Mr. SHERIDAN. I submit that don't do any damage to allow the witness to explain that.

Mr. GRAY. They were based upon locations made subsequent to that time, and the records themselves show it to be so.

The COMMISSIONER. Answer the question.

A. Read the question.

(Question read by the reporter.)

A. That is not what was located at that time. The money which was paid in this matter was paid in connection with other business we were doing.

Q. In Alaska?—A. No, sir; we had a land account, and the money which was paid was paid out of our copartnership account on this, the same as being for our land or anything else that we were interested in together; that was the way it was done.

Q. Now, the question I asked, or intended to ask you, Mr. Jones, if I did not make it clear to you, is, was Mr. Stevens interested in this particular claim with you at any time in Alaska?

Mr. GRAY. Now, in what particular claim?

Mr. SHERIDAN. In his own claim?

Mr. GRAY. The Calais?

Mr. SHERIDAN. Yes.

A. Well, he was interested in this interest. We had located the claim—I suppose I should say, yes, this claim, but the claim was not located then.

Q. It was a partnership claim?—A. It was at that time, yes.

Q. That was in 1903?—A. Yes; I paid the money out of our partnership account.

Q. Now, you say he had some interest in that interest. What do you mean by that?—A. Well, candidly, what I mean by that is: That Mr. Stevens asked me to see Mr. Cunningham, and he said the expenses, besides that \$1,600, the way I understood it, would be somewhere between \$750 and \$1,000, and this money we were paying was on account of the expenses, that we were paying to Mr. Cunningham. That is the way I understood it.

Q. Now, not considering the \$1,600, which was subsequently paid to the Government for this land, what was the purpose for which that \$750 to which you refer was advanced to Mr. Cunningham?—A. Well, that was to pay Mr. Cunningham for his services in this matter of the

land, the way I understood it, although I must admit I never understood what that was for in detail, because Mr. Stevens did the talking with Mr. Cunningham and I never would be in this if it was not for Stevens, and he attended to the details until he died. I did just what Stevens said. He had been instrumental in assisting me in making some money, and I went along because he wanted me to, and I never asked about details when I saw Cunningham—I saw him so very little—and then when Frank died, I attended to fixing up our affairs with the widow, and I just kept going along.

Q. Now, this \$750 to which you referred was given to Mr. Cunningham some time in 1903?—A. Yes; that was April, 1903.

Q. When did you say Mr. Stevens died?—A. He died in September, 1903; I believe it was the 25th. I think we buried him here on the 30th of September, 1903.

Q. When did you say it was that you first met Mr. Cunningham in connection with that one claim?—A. It was in April—in March or April. I believe I said April or May yesterday. It was March or April I met him. I think it was April.

Q. 1903?—A. 1903, because I paid the money on the 23d of April, or the latter part of April, 1903, and I met him just probably a day or two before, but it might have been a few days longer than that before.

Q. Now, Mr. Jones, give us, just as near as you can, the substance of what conversation you had with Clarence Cunningham concerning this land the first time you met him?—A. Well, I went with Mr. Stevens to the Hotel Spokane and we met Mr. Clarence Cunningham. I never met him before, and Mr. Stevens and Mr. Cunningham did nearly all the talking. I said hardly anything; and they just simply told me—Mr. Cunningham told me about his trip to Alaska and about the country there, about his locating the claims there for Finch & Campbell and for himself, and I think he mentioned also R. K. Neill, and he mentioned some names of some other persons that I did not know, and am not sure now what names they were, because these three, outside of himself, were, as I remember it, all of the men I knew at that time.

Q. Now, Mr. Jones, in this conversation which you had with Mr. Cunningham, as just described by you, in the presence of Mr. Finch—

A. (Interrupting.) In the presence of Mr. Stevens.

Q. (Continuing.) In the presence of Mr. Stevens, I should say—did you or did you not consider the feasibility of developing that claim that you proposed to take up?—A. Why, I did not go into the details, did not talk of the work at that time at all with Mr. Cunningham. There was nothing said about that, absolutely nothing.

Q. But was it prior to this conversation that you had paid him \$750?—A. No; it was after.

Q. About how long after?—A. Well, it might have been only a day or two; and it might have been a month. It was afterwards, anyhow.

Q. Now, before you gave him this \$750 did you have any discussion with him as to the feasibility of operating that property, and possible expenses, etc.?—A. No, sir; did not go into that at all. If there was any talk about that at all, it was done between him and Stevens, because we did not talk about it. He just said it was a good thing.

I have had sad experience about things in mining and I was not very enthusiastic. They always say it is a great thing, a good thing. Miners never go into many details.

Q. Mr. Jones, did you ever receive any accounting from Mr. Cunningham for the expenditure of this \$750 which was paid him in 1904?—A. Why, I received statements from him, yes.

Q. Statements?—A. Yes.

Q. What did you understand at the time you gave him the \$750, just generally, what he was to spend it for?—A. Why, I supposed it was for railroad fare, expenses, men locating claims, engineers, and things like that.

Q. Was that \$750 sent by you through a bank, or was it given personally to Mr. Cunningham?—A. I think it was sent to him, or he drew a draft on me. I can not tell which. But I don't think he came to my office and got it. I think it was sent to him.

Q. Do you recall through what bank?—A. No, sir; I do not.

Q. Do you recall whether Mr. Cunningham was here in the States or in the district of Alaska at the time the money was sent out?—A. Oh, I think it was sent to him at Seattle, or else he drew on me from Seattle; but I am not sure about that.

Q. Now, then, when did you next meet Clarence Cunningham after that?—A. Well, I could not be absolutely sure about that, but I don't believe I saw Mr. Cunningham only twice before the time of the meeting in May, 1907. I don't believe I did.

Q. Do you recall where this second meeting occurred?—A. Well, I met him once in the barber shop on Post street, and I met him with his wife on Riverside avenue. I was coming with my automobile along Front street, and they were walking along and I asked them to get in the back seat, and in six blocks we were at the office and did not have time to talk about anything, just passed the time of day, and I told the chauffeur to take them wherever they wanted to go and I got out at my office.

Q. Now, between the occasion of this first meeting with Clarence Cunningham, in 1903, and these subsequent encounters with him, casually meeting him on the street or in the barber shop, did you have any correspondence with him concerning this claim?—A. I did not write to him about it.

Q. Did you write anyone about it?—A. No, sir; I don't think I did. I don't remember that I did. I feel almost sure about that.

Q. But he called on you from time to time for money and you remitted it during that period?—A. Yes; he drew drafts upon me, and generally I went up to Finch & Campbell's to see, ask if they had paid theirs, and if they said they did, I did.

Q. About how frequently in the year did Mr. Cunningham draw on you?—A. Oh, I couldn't tell you that. There was one time it went over a year, and maybe a year and a half he did not draw on me for anything. I think that was the longest spell, though. It generally came regularly.

Q. But generally about how often in a year did he call on you for money?—A. Oh, probably a couple of times a year, outside of this one time, \$100 or something like that.

Q. During what year was it he did not call on you?—A. I think he did not—I did not pay anything, however, during the year 1908; don't believe I paid anything during the year 1908.

Q. That is the year to which you referred when saying that during one year he did not draw on you?—A. Well, I would not say. I did not pay all of his drafts when they came. He may have drawn on me during that time, but I don't think he did. Now, there was a couple of drafts I did not pay when they came.

Q. Do you recall in what year you did not pay drafts?—A. I paid them afterwards, but I did not pay them when they came.

Q. Any particular reason for not doing so?—A. Oh, I suppose I was out of the city or something. I am away considerably; have to be. I probably was out and the secretary did not know about it and did not pay them.

Q. When did you first become aware of the fact that Clarence Cunningham was to be paid a salary, as testified to by you?—A. I did not know that until I saw it in the newspapers lately.

Q. On the occasion of this conversation between Mr. Stevens and Mr. Cunningham and yourself in 1903, here in Spokane, as I understand you, you did not discuss the question of cooperation in developing the claims?—A. No, sir; we didn't.

Q. Nor of building a railroad?—A. No, sir.

Q. Nor of combining the claims for the purpose of economy?—A. No, sir, there wasn't a word said about anything of that kind.

Q. What was your idea in taking up this claim, Mr. Jones?—A. Because Stevens—he was an old-time mining man—and Cunningham said it was a good thing, and coal was going to become more valuable, and Stevens and I had made some money together, and he was first responsible for the money we had made, he was my partner, and he said it was all right, and I went in with him.

Q. Did you have any idea at the time you took it up as to the manner you would take and develop it?—A. No, sir; I did not expect to get very much out of it.

Q. Now, as I understand you, Messrs. Finch & Campbell and Clarence Cunningham were all of the entrymen you knew at the time you took up this claim?—A. And R. K. Neill.

Q. And R. K. Neill?—A. I think he spoke of R. K. Neill. Don't misunderstand me about that. All the entrymen that I knew he mentioned to me that were going in at the hotel. There may have been some he did not mention that I knew, because I did know some of the other entrymen. I knew Mr. Collins, of Rockford, for many years, but it was quite a while after that before I knew he had an interest or had taken a claim.

Q. Mr. Jones, I now hand you Government Exhibit 5, and ask you to state if you ever received, from Clarence Cunningham or anybody else, such a statement as is set out in that exhibit.—A. Why, I think I did. Yes, I think so.

Q. From whom?—A. I think I received that through the mail from Clarence Cunningham.

Q. Do you recall approximately when?—A. Oh, I could not say when. About that. I don't know. I see the date there, 1904. I suppose that is the time. I could not say when.

Q. I now hand you Government Exhibit 6, and ask you to state if at any time you received from Clarence Cunningham or any other person such a statement as is set out in this exhibit.—A. No, I think I got this from him also.

Q. From Clarence Cunningham?—A. I think I did; yes, sir.

Q. Do you recall when?—A. I could not say when.

Q. I now hand you Government Exhibit 7, which is the report of H. L. Hawkins on this group of entries and ask you if you ever received this report from Mr. Cunningham [handing paper to witness].—A. Oh, I probably received this, but I don't remember much about this. I hardly think I got it, but I probably did.

Q. Would reference to the map which is attached to it refresh your memory in any way respecting it?—A. I don't remember seeing this map until a few days ago; and when I saw it a few days ago I did not remember of ever seeing this map before.

Q. Now, Mr. Jones, I hand you Government Exhibit 8 and ask you to state if you ever received such a statement as therein set out from Mr. Cunningham [handing witness paper].—A. I don't remember that at all.

Q. I now hand you Government Exhibit 9 and ask you to state if you ever received such a statement as that from Mr. Cunningham [handing witness paper].—A. I think I received that. That is my recollection.

Q. You do not recall when?—A. No, I do not. Probably received it about that date somewhere.

Q. Now, you stated you had no correspondence with Mr. Cunningham during this time, at the time you first sent him up there?—A. I don't believe I ever wrote to Mr. Cunningham.

Q. Did he ever write you at any time while he was away concerning this matter other than the drafts?—A. And reports.

Q. And these communications which you have just identified?—A. I don't think so. Just matters in connection with what he was doing.

Q. You don't recall having received any letters from Mr. Cunningham other than the matters set out in these exhibits?—A. I have received more things than you have shown me, more papers and things.

Q. You say you have?—A. Yes, sir.

Q. What was the nature of those papers?—A. They had just reference to this matter.

Q. Letters?—A. Well, mostly statements, saying at the bottom that another draft would be coming. Did not write me in a social way about it.

Q. Now, did he write you any letters other than these statements, any letters explaining these statements or explaining the claims?—A. Well, I think he did write some letters outside of these statements explaining about the things.

Q. Were those statements generally accompanied by letters from Mr. Cunningham transmitting them to you?—A. No, sir; I do not think so.

Q. Just merely inclosed in the envelope, in that form, and sent to you?—A. Virtually.

Q. Have you preserved any letters you may have received from Cunningham in this connection?—A. Well, all I preserved I gave to my attorney in this case here.

Q. I now call attention to Government Exhibit 3, part of which exhibit consists of a copy of what is known as the Cunningham journal, and I will ask you to scan this exhibit and state whether or not you ever saw the original of which this is a copy, and, if so, under what

circumstances?—A. No, I never saw that; that is, I never saw what this refers to. This has 2 or 3 pages. I don't know anything about anything like that. I have not seen that.

Q. You refer to the first pages of the copy of the Cunningham journal as shown in Government Exhibit 3?—A. Yes, sir.

Q. Now, with reference to these statements on page 1 on this copy of the Cunningham journal concerning the one-eighth interest in each of the claims or stock, or a one-eighth interest was to issue to Mr. Cunningham for services in securing said lands, what do you know about that?—A. I don't know anything about it only what I have heard lately.

Q. How lately?—A. Since this matter has been before the public here, the last month or two.

Q. Did you have such an agreement with Cunningham?—A. No agreement with Cunningham, and I never heard of any agreement being made of that kind.

Q. I now call your attention to Exhibit 28, consisting of a copy of the affidavit of Clarence Cunningham, dated March 6, 1908, and executed before L. R. Glavis, and your corroboration thereof, dated April 23, 1908, and executed before one Keisow, a notary public, and ask you to state in your own words, Mr. Jones, how it was that this affidavit came into your possession and how long you had it, and whether or not you signed it?—A. It was sent to me by Mr. Glavis, and the letter accompanying it asked me to sign it, and I signed it, and I wrote him a letter returning it to him, and I did it within a very few days. He wrote me—he wrote me on the 18th.

Q. Of what?—A. The 18th.

Q. Of what month?—A. Of April.

Q. Of what year?—A. Of 1908. I have the letter right here. That is the best evidence, I guess, of when he wrote me. [Witness refers to paper.]

Q. You have a copy of it?—A. April 18, of 1908, is when he wrote me, and I answered the letter on April 23, 1908, returning this.

Q. Returning this?—A. Yes, and I signed it, and that is my signature [examines paper]. Yes, that is my signature. It refers to the Maxine claim, it didn't refer to my claim, but I signed it just the same.

Q. Now, I call your especial attention to that part of this exhibit which is filled in with blue typewritten letters, and I ask you to state where those words appearing in blue ink, appearing on that corroborative affidavit, were written in by the typewriter?—A. I don't know where they were written in—the chances are—I don't know where they were written.

Q. Do you recall whether or not the spaces upon which they were written were blank when you received this affidavit?—A. No, sir; I do not. I just signed it and gave it to the notary public, and he attended to the balance of it. He wrote the letter that sent it to Mr. Glavis.

Q. Who did? The notary public?—A. Yes, sir.

Q. Who was that notary?—A. No. I will have to take that back. He didn't write this letter. I wrote this letter myself.

Q. Returning the affidavit?—A. Yes, sir. He usually did it; usually signing it is all I did; gave it to him and he did the rest.

Q. Now, you state you can not recall who filled in this name "Arthur D. Jones" on the blank of the Maxine claim?—A. No, sir; and I really do not know.

Q. You said you have with you a copy of Mr. Glavis's letter of transmission; is that correct?—A. I have the letter.

Q. What did Mr. Glavis say to you in this letter?—A. He asked me to sign this.

Mr. SHERIDAN. Have counsel for the claimants any objection to that letter being exhibited to me?

Mr. HUGHES. I don't think we want to have Mr. Glavis's testimony unless it is sworn to, is the way I feel about it.

Mr. SHERIDAN. Have counsel for claimants any objection to this letter being called in as an exhibit?

Mr. GRAY. Haven't you a copy of it, Mr. Sheridan?

Mr. SHERIDAN. That is not answering my question.

Mr. HUGHES. I did not understand. There is no objection to turning it over to you. I thought you asked our consent that it be introduced in evidence. I do not think it is competent evidence, and I do not think it is material. I have no objection to Mr. Jones turning the letter over to you and you doing what you like with it, but I am not disposed to consent to the introduction of it in evidence. I want Mr. Glavis to testify himself with regard to letters and not have his letters be substituted. Now, I will say to Mr. Jones, I have no objection to your turning that letter over to Mr. Sheridan.

The WITNESS. Want the answer, too?

Mr. HUGHES. Oh, no; I don't think so.

Mr. GRAY. You have got the answer.

Mr. SHERIDAN. I have that. This letter has been referred to by the witness and therefore I think it will help to clarify things by having it in the record. Now, reading from the letter from Mr. Glavis to the witness now on the stand, which letter is dated Portland, Oreg., April 18, 1908, I quote the following:

Mr. HUGHES. I do not like to interrupt you, but I submit to the commissioner that is always conceded to be an improper method of cross-examination and immaterial. If the document is admissible as evidence it speaks for itself, and to quote from a document not in evidence is improper cross-examination; and I think that either counsel should offer it subject to our objection—

The COMMISSIONER. I think that is the proper course.

Mr. SHERIDAN. I am perfectly willing to do so. I have offered counsel—

Mr. HUGHES. I think if it is introduced it should be subject to our objection; and of course the same objection will run to the attempt to quote from it as would run to the introduction of the document.

The COMMISSIONER. Did you wish to offer the letter in evidence?

Mr. SHERIDAN. Just a moment. [Examines paper.] With the consent of the witness from whom I obtained the letter I now offer this in evidence as an exhibit.

Mr. HUGHES. We object to the introduction of the exhibit in evidence for the reason it is incompetent and no proper foundation has been laid for its introduction, not authenticated or sworn to by Mr. Glavis; and we further object to it upon the ground it is irrelevant and immaterial.

The COMMISSIONER. It may be received and marked Government Exhibit 38.

(Letter marked "Government Exhibit 38" admitted in evidence.)

Q. I now wish to quote a little from this letter.

Mr. GRAY. Now, if the commissioner please—

The COMMISSIONER. The letter speaks for itself, and it encumbers the record to read it. Why not show the letter to the witness and call his attention to it?

Mr. SHERIDAN. If the commissioner please, I want to ask a question based upon the part I am quoting, and I think it will be apparent to counsel that it is perfectly proper when I am allowed to propound the question.

Q. Mr. Glavis says in this letter, among other things, "I transmit herewith an affidavit made by your agent, Mr. Cunningham, and attached thereto you will find an affidavit corroborating Mr. Cunningham's affidavit which, if the statements are true, kindly sign and return to me at your earliest convenience. If there are any other facts which you desire to state I will be pleased to have you do so." I ask you now, Mr. Jones, if you read this letter and considered it before signing the corroborative affidavit which you signed and sent back?—A. Yes, I read the letter. I read everything I got to see it wasn't a note for \$10,000 or something like that.

Q. I hand you Government Exhibit 10, which has been referred to generally as the Guggenheim memorandum, and I will ask you to state, in your own words, and briefly, what you know about the matters therein set forth [handing witness paper]? You have seen that memorandum recently, haven't you?—A. I have seen it, but I don't know when I saw it. Yes, I can say I think I saw this, I am quite sure I did.

Q. Under what circumstances?—A. Why, I think a copy was mailed to me some time.

Q. Could you recall approximately when?—A. No; I don't know. I expect it was 1907, something like that. Probably about July or August, 1907. The date of the instrument is the best evidence. I knew of that probably by about that time.

Q. You received it from Mr. Clarence Cunningham?—A. I don't know who I received it from. I don't know who mailed it to me.

Q. Do you recall from what city or place it was mailed to you?—A. I don't; no, sir.

Q. Do you recall whether there was any letter accompanying this when you received it?—A. I do not think there was.

Q. Now, did you agree with what was done and set out in that exhibit?—A. No; I didn't agree with that.

Q. Why not?—A. Well, I would not go into a deal like that with anybody.

Q. Why not?—A. For business reasons.

Q. Enlarge a little bit.—A. What is that?

Q. I say enlarge a little bit. Why not? Give us your reasons?—A. Why, if I had been inclined to go into any deal at that time I would not consider this a good deal for me.

Q. Well, why not?—A. Oh, because I would feel that it would be much better to sell my claim than to be such an atom in such a deal as this would seem to be.

Q. I now call your attention to Claimants' Exhibit No. 3, wherein are set out the minutes of a meeting held in the office of Finch & Campbell on May 15, 1907, and ask you to state if you were present at this meeting?—A. May 15, 1907? I was there.

Q. You have already examined these minutes?—A. Yes; that is the first meeting I ever attended. The first conference.

Q. You have already examined these minutes since this inquiry began?—A. I think they were handed to me yesterday.

Q. Did I understand you to say yesterday that it was suggested that you serve as one of the committee?—A. In one of these meetings, either this or the other meeting, my name was suggested as a committeeman, not the committee to go to Salt Lake.

Q. I now hand you Government Exhibit 4, which is the minutes of the meeting of July 16, 1907, already referred to, and ask you to state which of these meetings was it, at which you were called upon to serve as a committeeman?

Mr. HUGHES. Did he say that he did serve?

Mr. SHERIDAN. No.

Mr. GRAY. No; he said he was asked to.

Mr. HUGHES. And he declined?

Mr. GRAY. Yes, declined.

A. That was not referred to in yesterday morning's newspaper.

Q. Can't you identify it from these two exhibits?—A. I think it was this committee here.

Q. In which exhibit?—A. In this, May 15, 1907.

Q. That being Claimants' Exhibit 3?—A. Yes; that is my recollection.

Q. But you did not serve, as I understood you, Mr. Jones? A. No; I didn't serve.

Q. As I recall it, you stated you did not care to serve?—A. No; I didn't care to serve.

Q. Why not?—A. Oh, I was very busy.

Q. Is that the only reason?—A. And I am not a mining man and did not care to take the time to go—I did not care to give it the time which would be necessary to give the matter due consideration.

Q. That was the only reason?—A. As a committeeman.

Q. That was the only reason for your not serving?—A. That was the reason I gave.

Q. Did you have any other reason for not wanting to serve?—A. I did not care to serve anyhow.

Q. Why not?—A. I hadn't taken an active interest in the coal-land matters, and I did not care to do anything about the matter until we had our patent, although I felt at that time we had some vested rights; had my receipt, I believe at that time, if I remember correctly; and when I got the receipt and paid my \$1,600 I thought I had something—had some right.

Q. Now, in Claimants' Exhibit 4, which sets out the minutes of the meeting of July 16, 1907, in Spokane, it appears that you were present in person at that meeting?—A. I think that is the second meeting I attended, or the second conference.

Q. I call your attention to a statement in said Claimants' Exhibit 4, which says: "All of the persons present agree to ratify any action taken by said committee." What have you to say concerning it?—A. I did not understand it that way.

Q. What was your understanding?—A. Why, my understanding was that the meeting was more of a conference and discussion of conditions and things with reference to the coal properties—coal claims.

Q. Did you agree to ratify any action taken by this committee?—

A. No, sir; I did not.

Q. Did anyone else present at that meeting, as far as you know?—

A. Not as far as I know; no, sir.

Q. I now call your attention to Claimants' Exhibit 5, which is a letter from Special Agent H. K. Love and a draft to you and bearing date November 2, 1906, which, as already testified to by you, accompanied what was known as the "Love affidavit," even though we can not find it at the present time, which was sent to you by Mr. Cunningham, I believe, for your signature; is that correct?—A. Why, I think I signed this affidavit, which was sent along with the letter; that is my recollection.

Q. And returned it to whom?—A. I really don't know just what I did sign. My intention was to read over these things and see what they referred to, and as it referred to this coal matter and was recommended by Cunningham, I signed it.

Q. Was this sent directly by Love to you, or did Cunningham send it to you, as far as you recall?—A. I think probably that was sent by Mr. Love to me. I rather think so. I am not sure, though. I have not checked back these things or tried to get my dates all around.

Q. With reference to the appointment of a committee to go to Salt Lake City for a conference with the Guggenheim representative, I believe you stated yesterday you believed that committee had been sent down there merely as a matter of courtesy to talk something over with the Guggenheims. The reason I refer to that expression is because I have it, got it here at the time it was stated, on my notes. What did you mean by that expression, Mr. Jones?—A. Why, this is two questions I am asked.

Q. No; just what did you mean by saying this committee went there to discuss matters there as a matter of courtesy?

Mr. GRAY. Are you certain about the use of that expression?

Mr. SHERIDAN. I am quite sure the record will show it.

A. That had something to do with it.

Q. Well, what did you mean by that—by the use of that expression?—A. Well, they had been talking to Mr. Cunningham, it seems to me, and the entrymen were interested in getting more information as to the value of their claims, I take it, and more—some of them wanted to have a further conference with the Guggenheims, so a committee was appointed.

Q. Do you know a party by the name of Jerry Hayes?—A. I do not; if I ever met him, I don't remember it.

Q. At both of these meetings, at which you were present, Mr. Jones, Doctor Cunningham, Clarence Cunningham's brother, was present also, wasn't he?—A. I don't remember.

Q. It so appears from the minutes.—A. I think he was. I don't remember.

Mr. GRAY. Now just wait a minute. If he don't remember, you can not read it from the records.

Mr. SHERIDAN. Well, it appears in the minutes he was.

Mr. GRAY. Well, then, the minutes show it.

Q. Do you recall during the meetings, or either of them, any party making an offer to Doctor Cunningham for his claim in the presence of those who attended that meeting?—A. I do not.

Q. You have no recollection of the presence of Jerry Hayes in either of these meetings?—A. No, sir.

Q. Or any such an offer being made to any one or all of those present?—A. No, sir; I did not hear it if there was any offer made.

Q. From the time you became interested in your claim in Alaska, Mr. Jones, down to the time you received your final receipt did you consult any attorney concerning your claim?—A. No, sir; I don't remember that I did. I did not have very much interest in it until after I got my receipt and paid for it.

Q. Is there any agreement existing between you and the other entrymen to this inquiry, at the present time, concerning the joint development or operation of your claim with theirs of any kind?—A. None whatsoever; no, sir.

Q. And there has not been, as I understand your testimony, at any time?—A. No, sir; there has not been. Absolutely none.

Q. I now hand you Government Exhibit 29, which sets forth the article of incorporation of the Bering River Railroad, and ask you to state what you know about such an organization and its purpose?—A. I don't know anything about it except what I have seen in the newspapers lately. Don't know anything about it; never heard of it until lately.

Q. Did you at any time take any part in any conference or correspondence between yourself and the other entrymen, now, concerning the building and organization of such a railroad?—A. I did not.

Q. Have you at the present time any interest in this railroad?—A. I have not.

Q. Have you any other interests in Alaska, Mr. Jones?—A. No, sir; I have not.

Q. Have you ever been in Alaska?—A. I never have.

Q. Do you know anything about any deeds having been placed in escrow in any bank, or with any trust company, with a view to consummating an agreement to interest the Guggenheims in these claims?—A. I do not.

Q. Did you ever make such a deed?—A. I did not.

Q. Was the money which you gave Mr. Cunningham, that paid for this land, your own money, coming out of your own funds?—A. After the first two payments?

Q. Yes.—A. Absolutely out of my own funds.

Q. The first two payments being as already described by you in your testimony?—A. In 1903.

Q. Yes, in 1903?—A. Yes.

Mr. SHERIDAN. I now wish to offer in evidence as Government Exhibit 39, a letter purporting to be written by Arthur D. Jones & Co., by one Kiesow, a draft to H. K. Love, special agent of the General Land Office, Juneau, Alaska, bearing date April 12, 1907, for the purposes set out in that letter. I offer this letter as an exhibit for the purpose of showing that what has been referred to as the Love affidavit was received by Mr. Jones, the witness now on the stand, and subsequently returned by him to such Special Agent Love at Juneau, Alaska. I specially wish to present this as an exhibit for the reason that the list of papers in the original entry papers of Mr.

Jones does not set out that the Love affidavit was inclosed with these papers and I want to account for it.

Mr. HUGHES. We add that we do not find it among them as a matter of fact.

Mr. SHERIDAN. No, sir; we do not.

The COMMISSIONER. It may be received.

(Paper marked "Government Exhibit 39" admitted in evidence.)

Q. Now, I hand you this letter, Government Exhibit 39, and ask you to state if you dictated that letter or directed it to be written?—

A. Why, I can say yes; and my direction about this matter to Mr. Kiesow was followed. When these things came in, I signed them and handed them to him, and he did the rest.

Q. That is your letter head upon which this letter is written?—A. Yes, sir.

Mr. SHERIDAN. That is all.

Redirect examination by Mr. GRAY:

Q. Mr. Jones, this claim was owned by you, and not Arthur D. Jones & Co.?—A. Yes; by me. I at that time owned all of Arthur D. Jones & Co., also.

Q. But the claim was held by you individually was it?—A. Yes; held by me individually.

Q. Now, Mr. Jones, there is one other question: After the death of Mr. Stevens in 1903, what did you do in connection with his interest which he originally had in there, if anything?—A. Why, after a while I settled up with his widow. I did not do it immediately after his death, but I settled up with her after a little time.

Q. And subsequent to that time did she or his estate or anyone other than you, have any interest whatever in it?—A. No, sir.

Q. Was that prior to the time that you made this power of attorney to Mr. Cunningham and the affidavit?—A. Why, I think I settled up with her about the first of the year.

Q. What year?—A. 1904.

Q. Was it prior to the time you made that?—A. I don't know just exactly what date it was.

Q. 1905 it says.—A. That is before that.

Q. Was anyone else interested in any payments you made after the first two except yourself?—A. No.

Mr. GRAY. That is all.

Recross-examination by Mr. SHERIDAN:

Q. Mr. Jones, I call your attention to the power of attorney executed by you, dated September 11, 1905, which is in evidence under the stipulation putting in all of the original entry papers in evidence, and I ask you to state if Mr. Clarence Cunningham was representing you between the time that you had your first interview with him, and had asked him to get a coal claim for you and the date of this affidavit?—A. He was.

Q. Had your authority to act as fully as is set out in this power of attorney?—A. Yes, sir.

Q. And you ratified what he did during that time and approved of it?—A. Yes; I left it all to him.

Q. How much, approximately, did you say you spent on these investigations through Mr. Cunningham and on your claim in Alaska, Mr. Jones?—A. Why, all told, do you mean?

Q. Yes, all told; just roughly?—A. I figured it up to date; it is about \$5,000.

Q. Now, just one more question, Mr. Jones, and then I am done. Here in Government Exhibit 3, on page 2 of what purports to be a copy of the Cunningham journal I notice an item which reads: "Hayes and Jones, \$500." Are you that Jones who was associated with him?—A. I don't know any man by the name of Hayes.

Q. The item appearing on the same page as Arthur D. Jones, of Spokane, is you, isn't it?—A. Yes; that is me.

Mr. SHERIDAN. That is all.

Redirect examination by Mr. GRAY:

Q. You mean your name is Arthur D. Jones?—A. Yes, sir; that is my name.

Q. Do you pretend to identify any entries on that book?—A. No, sir; I do not.

Q. Did you ever see any such book?—A. No; never saw that.

Q. Did you ever see any book like this, of which this purports to be a copy?—A. No, sir; I never saw any portion of this Cunningham journal as shown me there.

Q. I noticed a moment ago in an answer to a question by Mr. Sheridan you said that you ratified everything that Cunningham did from the time you first talked to him until you executed this power of attorney in 1905. What do you mean by saying you ratified everything he did in those years?—A. What I mean by that is, anything with reference to this mining claim up there, that he asked me to I did. He was attending to this for me. That was the getting the claim and the acquiring of that property, the same as I would send one of my men out down here to buy a piece of land or do that sort of business for me. Of course, as to the disposition of the claim, after I had my receipt, I attended this meeting. That was a matter of disposition. Mr. Cunningham did not represent me in that. Nobody represented me in that.

Q. Did he ever represent you in that?—A. As to the disposition of the claim, I am attending to that myself.

Q. Have you always done so?—A. Yes; I have.

Q. Did Mr. Cunningham ever represent you in any such matter as that?—A. Not in the disposition of the claim. He represented me in acquiring the claim.

Q. In locating it?—A. Yes, sir.

Q. And securing United States patent for you?—A. Yes, sir. Didn't sign any deed to anybody or anywhere and have not accepted any offers.

Witness excused.

MICHAEL DONEEN, a witness produced on behalf of the claimants, being first duly sworn by the commissioner, testified as follows:

Direct examination by Mr. HUGHES:

Q. Give your full name.—A. Michael Doneen.

Q. Where do you live?—A. Spokane.

Q. What is your business?—A. I am a farmer.

Q. You own farms and manage them yourself?—A. Yes, sir.

Q. And look after them?—A. Yes, sir.

Q. And make your home in Spokane?—A. Yes, sir; when I am not looking after them.

Q. Now, Mr. Doneen, you are one of the entrymen defendants in this action, are you?—A. Yes, sir.

Q. When did you first meet Clarence Cunningham with reference to making an entry in what is known as the "Controller Bay district" of a coal claim?—A. I think it was early in 1903.

Q. Had you known Mr. Cunningham prior to that time?—A. No, sir.

Q. Was Mr. Cunningham the first person with whom you talked in regard to the subject of making a location of a coal claim in Alaska in this district?—A. No, sir.

Q. Through Mr. Cunningham?—A. No, sir.

Q. Who was the first person?—A. Mr. Fred Davidson.

Q. When and where did you first meet him?—A. I met him here in Spokane.

Q. Did he give you any information with respect to the fact that Cunningham had been up there and expected to return to Alaska to make some locations?—A. He did.

Q. Mr. Davidson is a friend of yours?—A. Yes, sir.

Q. Had you been interested with Mr. Davidson in any business matters or in any mining deals?—A. Him and me was interested in the mine together.

Q. In a mining deal?—A. Yes, sir.

Q. Now, after talking with Mr. Davidson with regard to the matter, did you subsequently meet Mr. Cunningham; and if so, under what circumstances, and with whom?—A. I met Mr. Cunningham with Mr. Davidson.

Q. Where?—A. At the Pacific Hotel.

Q. You may tell now, what was the substance of the conversation between you and Mr. Cunningham and Mr. Davidson, on this occasion.—A. Well, when I first met Mr. Davidson, he told me Mr. Cunningham had been to Alaska and found some coal up there, and that he was going back again and was going to locate some of his acquaintances or friends, and he said he was going to take a claim, and he, Doctor Cunningham, was going to take a claim.

Q. The doctor?—A. Yes, sir. I think he mentioned Mr. Campbell and Mr. Finch, and he said he thought it would be a good thing for me to take a claim. I told him I did not know Mr. Cunningham, but if there was any chance, that I would like to get a coal claim.

Q. Well, the result was that Mr. Davidson brought Mr. Cunningham around to your hotel where you lived?—A. A few days after that.

Q. You had a conversation with them?—A. Yes, sir.

Q. And now, that is the conversation I have asked you, Mr. Doneen, to give in substance.—A. Oh, well, when I met Mr. Cunningham, I asked him about the coal, and how far it was from the ocean and the probable expenses of securing a claim.

Q. What did he say?—A. He told me it was about 23 miles from Katalla, and that he thought it would be good property and the cost of it, that is, it would cost about \$2,500 or \$3,000.

Q. It would cost you \$2,500 to \$3,000?—A. Yes, sir; and he also said it was very expensive to do work up there.

Q. Well, now, let me ask you, Mr. Doneen, at this point, had you had any experience in mines or mining camps most of your life?—A. I was in them a good deal.

Q. Work in quartz mills?—A. Yes, sir.

Q. And was familiar with mining countries?—A. Yes, sir.

Q. And from his description of conditions in Alaska you have some idea of what would be encountered by him in attempting to go into that country and build trails and make explorations, did you?—A. Yes, sir; I did.

Q. Now, what was said, if anything, about how much he would want you to pay him down at the time?—A. Five hundred dollars, is my recollection.

Q. Did you pay it to him, or did you authorize him to locate a claim for you?—A. I authorized him to locate my claim. He said he was going to leave for Alaska right away, and, my recollection is, I paid it to the doctor; I gave the doctor a check for \$500, and the doctor was to send it to him.

Q. Have you stated the full substance of the conversation you had with Mr. Cunningham at that time, or what is your best recollection?—A. I believe I have; yes.

Q. I want to ask you, for the purpose of refreshing your memory, whether there was, at this time, any conversation between you, with reference to your locating this claim for the benefit of anybody but yourself?—A. No, sir.

Q. Or anything said about your locating it for a corporation, or that you would ever turn it over to a corporation, or anybody else, or that anybody else than yourself ever have any interest in it? Was that subject discussed between you?—A. No, sir; I never discussed it.

Q. When did you next see Mr. Cunningham?—A. I think it must have been about two years or over.

Q. It has been disclosed in the course of the testimony here, that Mr. Cunningham was back again in the fall of 1904, that he was back here at Spokane on the occasion which he was married, and he was out of Alaska at that time, of course, for some little time, a month or two at least. I will ask you, if, during that period, in the fall of 1904, according to your recollection, you met Mr. Cunningham—Clarence Cunningham?—A. I don't think I did.

Q. Did you receive from him a power of attorney to execute, and for the purpose of refreshing your recollection in this connection, I hand you from the government files the papers indorsed "Coal entry No. 9," a paper purporting to be a power of attorney, executed by you on the 28th day of October, 1904, and witnessed by E. H. Sullivan and N. E. Nuzum, and I will ask you if the name "Michael Doneen" subscribed to that paper is your signature?—A. Yes; I think it is.

Q. Do you recall whether you received from Mr. Cunningham, this instrument to be executed and sent to him?—A. I think I did.

Q. Now, attached to the same paper, it is a part of the paper, fastened together, I find something in the power of attorney, a paper purporting to be an affidavit by you, and which I show you, and ask you if that signature thereto attached is your signature?—A. That is mine.

Q. Both of these instruments, the power of attorney and the affidavit, purport to be, one acknowledged and the latter sworn to by you on the 28th day of October, 1904, by Nulton E. Nuzum, notary public?—A. Yes, sir.

Q. Did you execute these papers and send them to Clarence Cunningham?—A. Yes; I think I sent them. I think I sent them to him. I don't just recollect.

Q. You sent that affidavit to him because he subsequently filed it in the land office at Juneau. Now, I call your attention to this affidavit made on the 28th day of October, 1904, the affidavit which I showed you a moment ago, and particularly to the following language in it:

I further swear that I am now in the actual possession of such coal land through my agent and attorney in fact, and make entry for my own use and benefit, and not directly or indirectly for the use or benefit of any other party.

Was that a fact at that time?—A. That is true.

Q. Had you at or prior to that time had any understanding or agreement with any other person that your entry should inure to the benefit of anybody but yourself?—A. I did not.

Q. Or that it should, at any future time, either before or after the issuance of patent, be turned over by you to any company or corporation and held by you for the benefit of any association of persons other than yourself?—A. No, sir.

Q. Or that anybody should have any interest in it of any kind?—A. No, sir.

Q. I now show you a paper from among the same government files—

The COMMISSIONER. One of the entry papers?

Q. Yes; being one of the entry papers, application for patent, marked, "Filed in Juneau land office February 21, 1906." I ask you if that is your signature to this application?—A. Yes, sir.

Q. And that was sworn to also before Nulton E. Nuzum?—A. Yes, sir.

Q. And was sworn to on the 31st day of January, 1906?—A. Yes, sir.

Q. You identify that as your signature, do you?—A. Yes, sir.

Q. I call your attention to the following language contained in this application:

I am now in the actual possession of said land, through my duly authorized agent, Clarence Cunningham, of Kayak, Alaska, whom I have heretofore appointed as such for the purpose of making the location, record, and entry of said coal land for me and in my name, and through whom I make the entry for my own use and benefit, and not directly or indirectly for the use or benefit of any other party.

I ask you what is the fact, whether at the time of making this application, it was made solely and exclusively for your benefit?—

A. It was.

Q. Did any other person, whether an entryman seeking to make entry through the agency of Mr. Cunningham, or otherwise, have any understanding or agreement with you by which such other person or persons will have any interest in this claim of yours?—A. No, sir.

Q. Did you have any understanding or agreement with any of the entrymen, or with Mr. Cunningham, as your agent, that any other person than yourself should then, or at any future time, either before or after the issuance of patent, have any interest in this claim, or any right or benefit arising out of the claim or the operation of it?—A. No, sir.

Q. Did you have any understanding or agreement with anyone that you would turn it over to any company or corporation or hold it for the benefit of any association of persons?—A. I did not.

Q. Mr. Doneen, I now show you a paper taken from the same government files bearing the indorsement, "Received and filed Juneau land office, January 23, 1907," and purporting to be sworn to on the 31st day of December, 1906, before R. J. Mearygard, a notary public, and ask you if this is your signature subscribed to that affidavit?—

A. It is.

Mr. HUGHES. The paper shown the witness is what has been designated and denominated in the proceeding as the Love affidavit.

Q. I call your attention to the following language in this affidavit, Mr. Doneen:

That said location was made for the sole use and benefit of the affiant (meaning yourself) and has ever since so remained his, and in his exclusive control; that at no time prior to location or at such time or since has affiant entered into any agreement, express or implied, or pledged himself by promise or otherwise, express or implied, by which the title to said land or any part thereof, or any interest therein, is to pass to any other person or association whatsoever.

Now, I ask you now, whether that statement was at the time when it was made, a correct and truthful statement of the facts set forth?—

A. Yes, it was.

Q. I call your attention to the following further language in this affidavit, to wit:

That in event said claim goes to entry in United States land office at Juneau, Alaska, and the receiver's receipt for the purchase price issues, I will not be under any contract or obligation or promise to sell or convey said tract to any person or persons or association, or to put the same into any company or joint holding for any purpose, or otherwise dispose of the same, but will be free in every way to hold said tract and lease or sell it at any future time.

I ask you if the statements there made were true?—A. They were.

Q. In all respects?—A. Yes, sir.

Q. Did they remain true up to the time of the cash payment and the issuance of final receipt to you?—A. Yes, sir.

Q. Did you, at the time of making this affidavit which I have just showed to you make any payment to the Government of the purchase price of this land?—A. Yes, sir.

Q. How did you do that?—A. I think I sent it to a bank in Seattle.

Q. With what instructions?—A. Why, to be applied on my claim.

Q. Well, did you instruct them to send it to the receiver direct?—A. I think so. I think I sent that through the Home National Bank in Spokane.

Q. To be forwarded to the receiver at Juneau?—A. No; to be sent to—I forget the name of the bank in Seattle, and to be forwarded to the receiver. These people up there.

Q. Now, I show you duplicate receipt dated March 13, 1907, and ask you, did you receive a duplicate of this paper—the paper which is shown witness being one of the files heretofore referred to in coal-land entry No. 9?

The COMMISSIONER. Being the final receipt issued by the receiver?

Q. Issued by the receiver of the Juneau land office to the witness.—

A. Yes, sir; I received it.

Q. I also show you, taken from the same file, the duplicate receiver's final certificate of entry, bearing the same date, March 13, and I will ask you if you received a duplicate of this paper?—A. I think I did.

Q. Mr. Doneen, at the time when you received the final receipt, or certificate that you have just examined, and at all times prior thereto,

I wish you would state whether you were under any contract or agreement or understanding, express or implied, with any other person whomsoever, that this claim should be held by you for the benefit of anyone but yourself to any extent?—A. I was under no agreement or contract with any person.

Q. Were you under any agreement or understanding with anyone that this claim should thereafter, at any time, be turned over to any company, corporation, or association of persons or should be held for the joint use or benefit or operation of any person or association, person, or company, or for the purpose of operation by any such persons, association, or company?—A. I was not.

Q. Were you present at a meeting held in the office of Finch & Campbell, in this city, in Spokane, on the 15th of May, 1907?—A. Yes; I think I was.

Q. I have heretofore shown you, for the purpose of saving time in your examination, this Claimants' Exhibit No. 3, purporting to be a copy of the proceedings of that meeting. You have looked that over, haven't you?—A. Yes, sir.

Q. I think I showed it to you yesterday. I will ask you if, according to your best recollection, that states the substance of what transpired at that meeting?—A. Yes, sir.

Q. And you also were present at a meeting held in the same office on the 16th of July, 1907. I showed you, I think, yesterday, this exhibit, Claimants' Exhibit No. 4, for the purpose of expediting your examination to-day. You recall having looked that over, do you?—A. Yes, sir.

Q. I will ask you if that exhibit gives a substantial statement of what transpired at that meeting?—A. This is the minutes?

Q. Yes; these are the minutes of the meeting of July 16?—A. I think so; yes.

Q. Did you, in either of these meetings, participate in the discussions yourself?—A. Well, no. I was at the meeting. I might have talked to some of the other gentlemen who were there, but I did not get up and make any talk. I was listening.

Q. At this meeting of July 16 a committee consisting of Miles C. Moore, A. B. Campbell, and Clarence Cunningham were appointed as a committee to go to Salt Lake City for the purpose of meeting with or negotiating with Mr. Eccles on the 20th of July following. This record, Exhibit 4, contains a statement that the persons present agree to ratify any action taken by such committee. Do you recall ever having—anything of the kind having been expressly stated there—concerning this, or considered yourself bound to ratify their action? Did you hear that?—A. Well, I did not understand it that way.

Q. In other words, what I want to know is: When this committee was appointed, did you understand you would be compelled to carry out anything they might contract to do?—A. Well, I didn't think so.

Q. I call your attention to the following language in the minutes of the meeting of May 15:

Thereupon, on motion of Mr. Sweeney, and seconded by Mr. Finch, the chairman was authorized to appoint a committee of five, who should organize a corporation for the purpose of acquiring the coal claims of those present, and those of such other claim owners as might desire to join the corporation. The committee to secure deeds to mining claims, and issue receipt therefor, and take all necessary steps to complete the organization of the company for the transaction of business.

Do you recall such action as that, taken at that meeting by you and a committee being appointed?—A. Yes; I do.

Q. Now, I will ask you if you were asked by anyone, subsequent to that time, to make a deed; and if so, by whom?—A. Why, I think that was the purpose of the committee, to get deeds; is my recollection.

Q. Well, by whom was any deed submitted to you?—A. Why, by Mr. Wakefield, I think.

Q. Did you sign it?—A. I signed it.

Q. And delivered it to him?—A. I went to Mr. Wakefield's office.

Q. And signed it and left it with him?—A. I left it with him.

Q. Do you remember of seeing a memorandum of what was done at Salt Lake? Do you remember whether this paper was ever submitted to you?

Mr. SHERIDAN. Government Exhibit 10.

Mr. HUGHES. Government Exhibit 10. I neglected to show you that yesterday, Mr. Doneen, but if counsel does not object, to save time I will explain to this witness that this is a copy of the proposition that was entered into and signed by this committee.

A. Yes; I recollect reading that.

Q. You recollect seeing that?—A. Yes, sir.

Mr. SHERIDAN. Bearing date?

Mr. HUGHES. Bearing date July 20, 1907, referred to as Government Exhibit 10.

Q. Do you remember seeing a copy of this?—A. Yes, sir.

Q. Was it sent to you, or did you see it?—A. I think it was sent to me.

Q. Now, did you have any conference with any others with respect to whether you would accept this or not, or would ratify or agree to its terms?—A. No; I don't think I did.

Q. Did you learn at any time subsequently whether this proposition had been carried out or not?—A. I learned that it fell through.

Q. What became of your deed that you had executed and left with Mr. Wakefield?—A. I was not in the city for a long time, and when I learned it fell through, why, I was in no hurry about taking my deed, but some time afterwards, quite a little while afterwards, I went down to Mr. Wakefield's office and got the deed and tore it up.

Q. Did you personally express to anyone your approval of this Cunningham proposition which I have just showed you?—A. Me, personally?

Q. Yes; did you?—A. No, sir.

Q. Did you, in fact, approve it at the time?—A. I did not like it, but I suppose I approved it. I intended to go in with it, into the proposition.

Q. If the rest did?—A. If they all went in, or nearly all.

Q. Now, Mr. Doneen, did you receive from Mr. Glavis an affidavit, or a form of an affidavit, to be executed?—A. Yes, sir.

Q. I show you this paper, Government Exhibit 24, and on the last page of it purports to be your signature. That is your signature on this page?—A. Yes, sir.

Q. Will you state how you came to sign this? State the fact with regard to this, Mr. Doneen.—A. Well, I was out of the city for quite a long time, and when I got back I found Mr. Glavis's letter, and I think he said in that letter that he was very anxious for me to sign it immedi-

ately as most of the other claimants—I think he said most of the other claimants—had already signed it.

Q. Well, what did you do?—A. I was at the time corroborating an affidavit of Clarence Cunningham, and I went down to Mr. Nuzum's office and signed it.

Q. Now, you read the affidavit over.—A. Well, yes; I expect I did.

Q. I will ask you to explain the expression contained—the statement contained in this affidavit—referring to the understanding existing among yourselves as to the disposition of your claims. What did you refer to?—A. The understanding?

Q. Yes; with reference—in this affidavit—to the understanding existing among yourselves as to the disposition of your claims. What understanding, if any, did you refer to?—A. Well, as I never had any understanding with the exception of that one at this meeting, why, I could not think of anything else.

Q. Your attention was called to the denial here of the interest here of the Guggenheims?—A. Yes, sir.

Q. Now, at these two meetings you have referred to, the one in May and the other in July, that you attended, the subject of the negotiations with Guggenheim was one of the principal subjects before the meeting, was it?—A. Yes, sir.

Q. I will ask you, if aside from the discussion which occurred at that time, the time of either or both of these meetings, you ever had any discussion with any other of the entrymen respecting any disposition of your claim?—A. No, sir.

Q. You used the following language here, to wit:

We have understood among ourselves, that when title was secured we would form a company and combine the entire group, since conditions are such that one claim could not be profitably mined, as anyone familiar with coal mining appreciates.

I will ask you if that subject and the fact you refer to here, that you could not profitably operate a claim in Alaska singly, was discussed in the meeting of May and July?—A. I think it was. Yes, it was.

Q. And the subject of forming a company and organizing a company, I quote this language from the record of proceedings:

For the purpose of acquiring the coal claims owned by those present, and those of such other claim owners as might desire to join the corporation.

Was discussed at the meeting in May, 1907, was it?—A. Yes, sir.

Q. Now, I will ask you whether that subject was ever discussed at any other meeting held prior to the time when you made this Glavis affidavit, except one or the other of these two meetings?—A. No, sir.

Q. Either between you and the persons at the meeting, or between you and Cunningham, or any other entryman, or any other person?—A. No, sir.

Mr. HUGHES. I want to say to counsel, while we do not deem the matter one at all material to the defense, counsel has inquired of one or two of the witnesses with respect to negotiations that occurred subsequently with one Jerry Hayes, and to inform counsel that this witness was present at this meeting; so if you desire you can ask on that subject, knowing—ask concerning the subject—knowing that your questions will elicit whatever knowledge he may have upon the subject, and that the information is simply an indication of good faith, if you

desire to use it. But I do not go into it because I do not deem it material to our defense. You may take the witness.

Cross-examination by Mr. SHERIDAN:

Q. How old are you, Mr. Doneen?—A. Fifty-five years old.

Q. What kind of business were you engaged in in 1903, when you first met Clarence Cunningham in connection with your coal claim in Alaska?—A. Well, I was looking after my land, my farming land.

Q. Where is your land located?—A. Some of it is in the Palouse country, and some of it in the Big Bend country.

Q. About how many acres do you own; just roughly?—A. Sixteen hundred and forty acres.

Q. Did you have that much land at the time that you became interested in this coal claim first?—A. I believe I did, yes. There was some of it I acquired just about that time, but I think so.

Q. Were you interested in any other sort of business at that time?—A. Any other what?

Q. Any sort of business?—A. Why, no; I may have been mining, taking a little chance in mining once in a while.

Q. Did you own any mining property at that time?—A. I owned some stock in a mine.

Q. In what mine?—A. In a mine up at Rossland, the Gold Hill.

Q. Gold Hill is the name of the mine?—A. Yes, sir.

Q. Now, have you continuously been interested in handling this sixteen hundred-odd acres of land which you had in 1903 down to the present time?—A. Yes, sir.

Q. Are you interested at the present time in any business?—A. No, sir; I am not.

Q. You attend to your own business affairs, Mr. Doneen?—A. Yes; try to.

Q. How many years experience have you had, approximately, in mining?

Mr. GRAY. Well, now, I hardly think—

A. Well, I really don't know.

Q. Well, just roughly.—A. I should think twenty or twenty-five years.

Q. Metalliferous mining or coal mining?—A. I never had any experience in coal mining?

Q. How long have you known Fred Davidson?—A. I first met him about in '93 or '94.

Q. 1903 and 1904?—A. No; 1893 and 1894.

Q. When did he first talk to you about having a coal claim for himself in Alaska?—A. It was early in 1907. He did not have a coal claim when he spoke to me.

Mr. GRAY. In what year?—A. In—along in 1903.

Q. When you said 1907—you meant 1903?—A. Yes; I made a mistake.

Q. When did you first talk to Mr. Davidson about coal claims in Alaska? I believe you stated Mr. Davidson did not have a claim on that occasion, on that first occasion?—A. Well, he told me Mr. Cunningham was going to locate it; that is all I can say.

Q. Now, give us the substance of what Mr. Davidson said to you in that connection at that time.—A. Well, he said he was going to take a coal claim, and Doctor Cunningham was going to take one too, and

Mr. Finch, and Mr. Campbell. He said he thought it would be a good thing, he knew Mr. Cunningham, and thought I could get one if I wanted one.

Q. Well, did you go into any discussion whether or not it would be worth your while to take up one, and what induced you to decide to take it?—A. Well, I thought there might be a chance to make something out of it, and I told him I was willing to take a chance with him. I heard of the other people, and as he told me that we were going to have Cunningham locate them, I thought if it was agreeable to Cunningham I would get him to locate one for me.

Q. Now, in what business was Mr. Davidson at the time you had this conversation with him?—A. Well, I don't really know. He had been the proprietor of a store.

Q. Where?—A. In the town of Oakesdale.

Q. Washington?—A. Washington.

Q. He was at that time?—A. Well, I think he was, and I think he is yet.

Q. Where did this conversation occur?—A. At the Pacific Hotel.

Q. Where?—A. Spokane.

Q. Did Mr. Davidson call you there for the purpose of talking to you, or did you go to him?—A. We happened to meet there as he came there.

Q. Does he, or did he at that time, have occasion to come here to Spokane frequently?—A. Oh, he comes here frequently, and I met him very often. Before that I met him very often. Meet him often since.

Q. Were you, at that time, interested in any business with him?—

A. No business; only we had some stock in the same mining company.

Q. Did you hold meetings in connection with the mining claim?—

A. We did.

Q. Was this meeting here in Spokane, at which you had this first conversation with Mr. Davidson concerning these coal lands in Alaska, occasioned by a meeting concerning this mining stock that you were both interested in?—A. No, sir.

Q. Can you give us just the details which you received from Mr. Davidson at this time, which led you to believe that it would be worth your while to go into this coal proposition, just simply as a business man, how did it appeal to you?—A. Well, I thought if there was coal there and I could get a coal claim, I thought it would be worth while to take a chance. It appealed to me like it would be a good thing in time.

Q. In time?—A. Yes; after I got a patent to it.

Q. Did you propose at that time to develop it at any specific time subsequently?

Mr. GRAY. I object, as immaterial and irrelevant. I think there is a limit to where such examination is competent.

Mr. SHERIDAN. I suppose it would be convenient to counsel for claimant if I would accept their direct examination in all and make no cross-examination, but I don't care to do it. I submit that is a question which should be answered.

Mr. GRAY. I think it is a matter which should be decided by the commissioner. I desire to make objections without being subjected to criticism.

Mr. SHERIDAN. Certainly; but the nature and the way objection is made is criticism of my judgment of the cross-examination, and I do not care to have that done.

Mr. HUGHES. It is not necessary to prove every objection.

Mr. SHERIDAN. If I agreed with the direct examination and the answers made to it, I would not make any cross-examination.

The COMMISSIONER. Read the question.

(Question read.)

The COMMISSIONER. I don't understand Mr. Davidson located him on this coal claim.

Mr. SHERIDAN. I am not asking him about Mr. Davidson.

The COMMISSIONER. You are asking him who he agreed with—whom he agreed with.

Mr. SHERIDAN. I think it is allowable for the witness to state what ideas he had, outside of this conversation.

The COMMISSIONER. That may be all right, but I want to satisfy myself with whom he agreed at that time. Was Mr. Cunningham present?

Mr. SHERIDAN. I submit that his answer will explain that.

The COMMISSIONER. I know, but it is necessary to get the question in the proper shape for the witness to answer.

Mr. GRAY. I made the objection because I thought it was taking up time on an immaterial matter, and it seems to take more time to settle it, so I will withdraw it.

The COMMISSIONER. I think his statements made at the time he conversed with Davidson are admissible.

Mr. GRAY. Undoubtedly, but this is a question of what he intended when he was going to locate this claim.

Mr. SHERIDAN. What he thought at that time is a matter of what constituted his intention at that time.

The COMMISSIONER. You can ask him what he thought at that time, or what he agreed to. I don't know whom he agreed with. I do not understand there had been any agreement there at that time. Read the question.

(Question read.)

The COMMISSIONER. Objection sustained.

Mr. SHERIDAN. I enter an objection to the ruling of the commissioner.

The COMMISSIONER. Very well. Proceed.

Q. Mr. Doneen, at the time that you had this conversation with Mr. Davidson, to which you now refer, at which time you discussed the advisability of your taking up a claim—a coal claim in Alaska—what was your idea as to what you were going to do with the claim subsequently?

Mr. HUGHES. We object to that question as irrelevant and immaterial. If he expressed his idea, or made any proposal to any of these other people, we make no objection to it, but to call upon a man to give his mental lumination, and ask him what he meant to do in the future, or anything like that, in the location of a coal entry, would be to fill volumes with utterly irrelevant matter. To any idea or announcement of purpose we will not object to it at all; but every man probably who has taken an interest in a mining claim has probably dreamed of all sorts of things of what he would do with it, and we do not want to listen to that; and that is the purpose of our objection.

Mr. SHERIDAN. I propose to have that question answered because it is obviously material to find out what this man's intention was at the time he took up this claim, whether he expressed it to anyone or not. That is common sense.

The COMMISSIONER. I think you may take the answer to that.

A. Well, I didn't know what I was going to do with it, but I supposed I would own it and do the best I could with it.

Q. Did you, at that time, have any definite idea about when you intended to develop it?

Mr. GRAY. Now, I object to that on the ground it is immaterial and irrelevant. That is the same question.

The COMMISSIONER. Take the answer to the question.

A. Well, I don't know, when I would get a patent to it.

Mr. SHERIDAN. Read my question to the witness. He has not answered it.

The COMMISSIONER. Read the question.

(Question read.)

A. No.

The COMMISSIONER. The noon hour has arrived. We will take a recess until 2 o'clock.

Mr. SHERIDAN. I just want to ask him, if I may, one more question concerning this point, and I shall have disposed then of that particular point.

The COMMISSIONER. Very well. Ask the question.

Q. Is what you have given us concerning this conversation at this time with Mr. Davidson, and prior to discussing the matter with Mr. Clarence Cunningham, all that you can recall concerning that conversation?—A. The conversation with Mr. Davidson?

Q. Yes.—A. That is all that I recall—that is, speaking of the cost, how near it was to a harbor, and things of that kind, in a general way. I believe we spoke about those things.

The COMMISSIONER. Is that all, Mr. Sheridan?

Mr. SHERIDAN. Yes.

And thereupon recess was taken to 2 o'clock p. m. of said day.

INQUIRY RESUMED.

DECEMBER 4, 1909—2 P. M.

Appearance: Hon. William J. McGee, United States special commissioner; Mr. James M. Sheridan and Mr. William B. Pugh, counsel for the Government; Mr. E. C. Hughes and Mr. John P. Gray, counsel for the claimants.

MICHAEL DONEEN on the stand.

Cross-examination resumed by Mr. SHERIDAN:

Q. Mr. Doneen, how fully did you go into the question of the possible cost, distance from the sea and transportation, which you mentioned just when we adjourned to-day at noon?—A. Well, I think that is about as far as I went with that; what was the probable cost.

Q. What features of the cost did you discuss?—A. Well, I suppose getting provisions in there, building trails, and probably houses, and doing general work.

Q. In that discussion of the cost did you discuss any question of the operating of the claim as a coal mine?—A. No.

Q. Now, what discussion did you have concerning transportation to the seacoast?—A. We did not have any, but I thought it was a good thing that it was not too far back.

Q. You did not go into any particular discussion of that feature of it?—A. No, sir.

Q. Now, all of this conversation to which you have been referring was a conversation you had with Mr. Davidson, wasn't it?—A. And some of it with Mr. Cunningham.

Q. About how long a space intervened between the conversation with Mr. Davidson and the first conversation you had with Mr. Cunningham?—A. I would say two or three days.

Q. Does the substance of what you have already given in your testimony cover the conversation had both with Mr. Davidson and Mr. Cunningham, or have you anything to add concerning the conversation with Mr. Cunningham?—A. No, sir; I think I have not.

Q. You have given everything?—A. Yes; I think so.

Q. I believe you mentioned in your direct testimony that it was estimated that the probable cost to you would be from \$2,500 to \$3,000?—A. Yes, sir.

Q. What did you assume that that would be for, what kind of work?—A. Well, I thought it would be for development work, and I thought the money that went to the Government would be included in that amount.

Q. In that amount? I see.—A. Yes.

Q. Now, at the time you made out this check to Doctor Cunningham, Clarence Cunningham's brother, what instructions, if any, did you give the doctor concerning that check?—A. I told him to send it to Clarence.

Q. Did you give any instructions as to how it should be expended?—A. No.

Q. You left that to Clarence Cunningham entirely?—A. Yes, sir.

Q. Now, when was it you met Clarence Cunningham again after that?—A. I can not say, but I think it was about two years.

Q. Later?—A. Later, or thereabouts.

Q. Where did you meet him then?—A. I think I met him at the Hotel Spokane.

Q. Give us, in your own words, substantially any conversation you had with him at that time concerning your claim or any other of the coal claims now under investigation.—A. I asked him how things were looking up there, and if he had much coal up there, and he assured me everything was looking all right, and that he had considerable coal, and I guess that is about all the conversation we had relating to the coal claim.

Q. You did not at that time go into any discussion of development, joint development, or railroad building, or harbor improvement, or anything of that sort?—A. No, sir; we did not.

Q. Did you at any time between your first meeting with Clarence Cunningham in 1903, and this subsequent meeting about two years later, have any correspondence with Clarence Cunningham concerning your claim other than the transmission of money from time to time?—A. Well, I think he wrote me a time or two when he drew on me.

Q. When he drew on you?—A. I think so.

Q. Did he say anything in those letters you can recall now?—A. Nothing; any more than that things were progressing very good.

Q. Have you those letters in your possession?—A. I don't really know. I don't believe I have.

Q. About how many such letters did you receive from him?—A. Well, I could not say. I received those statements, but I don't think there were letters with each one.

Q. Was there a letter with any of those statements?—A. I think there was.

Q. About how many letters did you receive in connection with those statements?—A. Well, now, I was thinking when I said statements—I was thinking about drafts.

Q. Drafts?—A. Yes.

Q. So you received no letters with the statements?—A. Well, now, I don't recall any.

Q. Now, as I understand you, these were the only two conversations you had with Clarence Cunningham, as near as you can recall—the one in 1903 and the one about two years subsequently, or did you have any others?—A. Oh, I think I met him after that.

Q. About when?—A. What I meant, there was a space of about two years there after I first met him; I think it was two years before I met him again.

Q. Now, after this second meeting did you meet him again?—A. I think so.

Q. Where?—A. Well, I met him on the street one time.

Q. Where?—A. On Riverside avenue, I met him one time.

Q. In Spokane, Wash.?—A. Yes, sir.

Q. Did you have any conversation with him there concerning your claim?—A. He was in an automobile, and I just shook hands with him.

Q. Did you ever meet him again?—A. After that?

Q. Yes.

Mr. HUGHES. You refer to the time prior to final payment, Mr. Sheridan?

Mr. SHERIDAN. Yes.

Mr. HUGHES. Prior to the final payment?

A. I can not say.

Q. I hand you Government Exhibit 5, and ask you to state if you ever received from Clarence Cunningham such a statement as this [handing paper to witness].—A. Yes; I think I did.

Q. From Clarence Cunningham?—A. Yes, I think so.

Q. I now hand you Government Exhibit 6, and ask you if you ever received such a statement from Clarence Cunningham?—A. Yes, sir.

Q. I now hand you Government Exhibit 7, which is the report of H. L. Hawkins on the group of claims now under investigation, and ask if you ever received such a report from Clarence Cunningham [handing witness paper]?—A. I did; the map was just like it.

Q. You refer to the map in the back of this exhibit?—A. Yes, sir.

Q. I now hand you Government Exhibit 8, and ask you to state if you ever received such a statement from Clarence Cunningham?—A. I don't know whether I ever received that one or not.

Q. I hand you Government Exhibit 9, and ask you to state if you ever received such a statement from Clarence Cunningham?—A. I think I received that statement but I have no recollection of the pen writing there. I think I recollect this.

Q. In the typewritten form?—A. In the typewritten form, yes.

Q. I now refer you to Government Exhibit 3, which contains what purports to be a copy of what is known as the Clarence Cunningham journal. On page 1 of this journal a statement is made to the effect that each subscriber shall have one-eighth of his stock issued to Clarence Cunningham in consideration for his services in securing said land. What have you to say about that?—A. I don't know anything about it.

Q. What arrangement did you have with Clarence Cunningham as regards compensation for his services?—A. I did not have any.

Q. I now call your attention to Government Exhibit 29, which contains the articles of incorporation of the Behring River Railroad Company, and I will ask you to look at it and state what you know about such an organization.—A. I don't know anything about this. I have no personal knowledge of it.

Q. Did you ever receive any notice or have any correspondence with any other of the entrymen now concerned with a view of organizing such a railway or in any way concerning it?—A. No, sir.

Q. When did you first learn that such an organization had occurred?—A. Well, I can't say, but it is lately.

Q. Was it this year?—A. Well, probably this year, or maybe last year.

Q. 1907?—A. Yes.

Mr. GRAY. Last year is not 1907.

Q. 1908?—A. Yes, and it might be last year.

Q. Not any earlier than that, Mr. Doneen?—A. I don't think so; I don't recollect it.

Q. Have you had at any time any interest in this organization?—A. Not that I know of.

Q. In what way did you learn of this organization first?—A. I think I saw it in the papers, something about it.

Q. And that was the only way in which you learned of it?—A. And Mr. Davidson might have told me about it or some one else.

Q. Could you recall when?—A. No, I can not.

Q. I now call your attention to Government Exhibit No. 24, consisting of the affidavit executed by Clarence Cunningham March 6, 1908, before L. R. Glavis, and your corroborative affidavit dated May 2, 1908. Give us in your own words, Mr. Doneen, how it was that this affidavit came into your possession and what consideration you gave it before signing it?—A. I received it from Mr. Love. I had been out of the city—

Mr. GRAY. What is that?

(Answer read.)

A. I received it from Mr. Glavis. I had been out of the city for two or three weeks, and when I came back I found this Glavis letter. He seemed to be in a hurry for me to sign it, and he said that all the other claimants, most of the other claimants, I think, had signed it, and I took it down to Mr. Nuzum's office and signed it.

Q. Did you read Mr. Cunningham's affidavit through before you signed the corroborative affidavit?—A. I suppose that I did.

Q. You read the corroborative affidavit also before signing it?—A. I suppose so. I did not—I was in a hurry to get it sent back.

Q. I hand you Government Exhibit 38, which is a letter from Mr. Glavis to Arthur D. Jones, already introduced in evidence, dated Portland, April 18, 1908, and I will ask you to read that and state if

the letter which you received from Mr. Glavis was the same as that one?—A. I think it was.

Q. What was the answer?—A. I think it was.

Q. I now hand you what is known as the Love affidavit, already in evidence with the original papers under stipulation, and ask you to give us again how it was that this came into your possession?—A. I received this from Mr. Love.

Q. Was there a letter with it?—A. Yes, sir.

Q. I now hand you Claimants' Exhibit 5, which is a letter from special agent Love to Arthur D. Jones, dated November 2, 1906, and ask you to state if that is identical with the letter sent to you by Mr. Love with this Love affidavit [handing witness paper]?—A. I think it is as I recall it.

Q. Now, in what way did you return this Love affidavit after you signed it?

Mr. GRAY. I object to that question as being immaterial.

The COMMISSIONER. Answer the question.

A. Why I suppose I mailed it to him. I don't recollect exactly how I sent it.

Q. Do you recall whether or not you sent it through somebody else or sent it direct?—A. Well—

Mr. HUGHES. I do not want to encumber the record by adding to his previous answer, but I think the next question is immaterial.

Mr. SHERIDAN. I propounded it in the hope he would have his memory refreshed.

Mr. GRAY. You appear to have all those letters transmitting them and I think you should know and be willing to produce them.

Mr. SHERIDAN. I don't believe that would answer my question.

The COMMISSIONER. Answer the question.

A. Do you mean I gave it to somebody else to give to him?

Q. I asked if you did. If you can recall, Mr. Doneen?—A. It may be that Mr. Davidson and myself returned that in the same envelope. Mine was signed at Oakesdale.

Mr. GRAY. If counsel has a letter, and I notice each time he asks his question he apparently produces from his papers a letter, I think it is only fair to give the witness an opportunity to refresh his recollection, if counsel has any such letter.

Mr. SHERIDAN. You will have plenty of opportunity to do so at the proper time.

Mr. HUGHES. The purpose of our objection is that the proper time is when the question is propounded, if it is based upon a letter or document not in evidence.

Mr. GRAY. That is only fair to the witness.

Mr. HUGHES. If counsel will consult Greenleaf he will recognize the rule we base our objection upon.

Mr. SHERIDAN. We submit, without going into a discussion, that we have a right to ask the witness if he remembers anything about the transaction.

Mr. GRAY. When he says he don't, you keep on asking him.

Mr. SHERIDAN. I suppose I should stop when he says he don't.

Q. I now call your attention to Claimants' Exhibit 3, consisting of the minutes of the meeting of May 15, 1907, in the office of Finch & Campbell, and at the same time to Claimants' Exhibit 4, consisting of the minutes of the meeting of July 16, 1907, in the same place,

at both of which meetings it appears from said exhibits that you were present. Please give us in your own words what the understanding was about the significance of these meetings and what was done there.

Mr. HUGHES. Objected to as being incompetent and calling for mere conclusion and opinion from the witness and not for statement of facts and is clearly irrelevant.

The COMMISSIONER. I think he can give his views of what he understood was the object of the meeting.

Mr. HUGHES. I do not mean to object to that. I did not understand that he asked what the object of the meeting was.

The COMMISSIONER. I think that is the question.

Mr. SHERIDAN. Read the question.

(Record read.)

Mr. GRAY. If he asks him what was done, what he understood was done, I suppose we could not object, but asking him his opinion of the significance of it is calling for mere opinion and conclusion.

The COMMISSIONER. I think I will allow the question to be answered.

Mr. GRAY. It might then be necessary to produce evidence to determine what the significance was.

A. These minutes state the object of the meeting better than I can. I think—as I understand it, I think they are correct or nearly so from what I can recall.

Q. You spoke of having executed a deed in connection with Government Exhibit 10, being the Guggenheim memorandum—

Mr. GRAY. I think that is not a fair question. As a matter of fact he did not, Mr. Sheridan.

Mr. SHERIDAN. It was my understanding he did.

Mr. HUGHES. What was the question?

Mr. GRAY. If he executed the deed mentioned in Government Exhibit 10, being the Guggenheim memorandum.

Mr. HUGHES. He did not say he made it in connection with that.

Mr. SHERIDAN. I don't mean to be technical in that statement, just simply called it in connection with it.

Mr. GRAY. Subsequent to the meeting of May 15.

Mr. SHERIDAN. That would be all right—what his correct testimony showed on the record.

Q. Now, my purpose in directing your attention to that general transaction, and including these meetings at which you were present, is to ask you why was it you placed this deed which you testified to having executed in the hands of Mr. Wakefield in this city?—A. Well, so it could be acted upon altogether, and if any proposition came up we could accept; why, it would be easier.

Q. What did Mr. Wakefield have to do with it, as far as you know?—

A. As far as I know, I think he was appointed by the committee to make deeds—make out deeds.

Q. At one of those meetings at which you were present?

Mr. HUGHES. The committee appointed at the meeting, and he says he was appointed by the committee?

A. I think the committee selected him.

Q. Did the committee select him at any time when you were present, and know of your own personal knowledge that they did

select him?—A. No; I could not say of my own personal knowledge that they did. They were just there and that was about all.

Q. Have you any actual knowledge of your own, Mr. Doneen, as to why he was selected?—A. No, sir.

Q. Did you at any time between the date of the location of your entry and down to and including the time of final receipt consult any attorneys concerning your claim?—A. No, sir.

Q. Have you any other interests in Alaska, Mr. Doneen?—A. No, sir.

Q. Have you ever been there?—A. No, sir.

Q. Was the money which you paid out through Clarence Cunningham for the purpose of taking up and exploiting that claim, and such other exploration work as was done on these other claims a part of your own funds or have you borrowed it?—A. Every cent of it was mine that I sent to Clarence Cunningham.

Q. I believe you stated in your direct testimony that you learned that this Cunningham proposition had fallen through?—A. Yes, sir.

Q. How did you learn it and from whom?—A. I don't know how, or I don't recall who told me that.

Q. Are you at the present time under any agreement concerning the sale of this property?—A. No, sir.

Q. Have you any tacit understanding with anyone that you are going to jointly develop it at any time?—A. No, sir.

Q. Have you ever had such an understanding?—A. I never had such an understanding, with the exception of the understanding we talked about at this meeting, or at that meeting.

Q. The Guggenheim concern?—A. That the minutes set out.

Q. As set out in the minutes?—A. Yes; I never had no other understanding or agreement.

Q. I believe you stated in connection with the Guggenheim memorandum, as set out in Government Exhibit 10, that while you did not like it that you would have gone into it if all or nearly all the other entrymen had agreed to go into it; is that correct?—A. That is correct.

Mr. SHERIDAN. That is all.

Redirect examination by Mr. HUGHES:

Q. Speaking of the railroad company and the articles of incorporation which counsel showed you, I will ask you if you were ever asked to take any stock or any interest in this road or in any other railroad up there?—A. No, sir.

Q. Or consulted at all about the organization of it?—A. No, sir.

FRANK F. JOHNSON, a witness produced on behalf of the claimants, after first being duly sworn, testified as follows:

Direct examination by Mr. HUGHES:

Q. Give your full name to the stenographer.—A. Frank F. Johnson.

Q. Where do you live?—A. Wallace, Idaho.

Q. How long have you lived there?—A. I have lived in Wallace about twelve years, and in the Coeur d'Alene country twenty-two.

Q. What business are you in and have you been engaged in for some years past?—A. Banking.

Q. At Wallace?—A. At Wallace and at Murray prior to that.

Q. What bank?—A. The First National Bank.

Q. What connection have you with that bank?—A. President.

Q. Are any other of the claimant defendants in this action associated with you in this business, and if so, which are they?—A. Mr. A. B. Campbell is a stockholder of the First National Bank and Mr. Henry White is also an officer and stockholder in the bank, Mr. R. K. Neill, who is one of the original locators, is a stockholder and at one time was a director before he moved away.

Q. Do you know Mr. Clarence Cunningham, and if so, how long have you known him?—A. I have known him of upward of twenty-two years.

Q. Where?—A. I first became acquainted with him at Murray, and he has been in Coeur d'Alene district more or less ever since.

Q. In what business was he engaged in the Coeur d'Alene district?—A. He had charge of a mercantile establishment when I first met him, and since then he has been engaged in mining.

Q. What was about the date of your first personal connection with the entry of the claim in the Controller Bay district in Alaska?—A. Well, the suggestion or statement was made to me I could probably get a claim.

Q. Well, what I asked for I will get to that matter later—but about the date of the first—about the date of your first connection of any kind with the matter of making an entry in this district in Alaska?—A. That is, you mean the first initiative step I ever took.

Q. Yes.—A. Well, some time in the month of November, 1904.

Q. Now, prior to that time had you learned from any of these associates in business of whom you have spoken of anything about their having become interested in this coal region and in the location of a claim through Mr. Cunningham?—A. I have.

Q. And with whom had you talked in regard to it, or from whom did you learn anything?—A. Well, in the beginning, a Mr. R. K. Neill, who was often in Wallace and had been up to Alaska and located ground there, and he had often talked to me about his having located one coal claim there; and Mr. Horace Davenport, who has been the cashier in our bank, but was not at that time, was one of the locators, and I had talked with him about it.

Q. Had he also been up there?—A. He had also been on the ground a short time before and took steps to apply for one of these claims. Mr. White had secured one of them and I had talked to him about it.

Q. Now, will you state how you first became interested and in what matter?—A. I was about to leave Wallace for a trip—

Q. That is, I mean, personally interested?—A. That is, my personal interest. As I was about to leave Wallace with Mrs. Johnson to southern Idaho for a trip when Mr. White came to the railway station to see me off, and stated while there, he understood one of the claimants was unable to carry on his claim on account of financial embarrassment and that he thought I could get a claim.

Q. Which one of the claims?—A. Well, he mentioned the fact that he thought Mr. Davenport, and he thought I could get a claim, and he would try to reach or find out about it, and I asked him to do so.

Q. Well, now, did you learn anything more at that time or afterwards?—A. On my return, which was some three weeks later, Mr. White had a telegram from Mr. Cunningham stating he could locate me on the claim.

Q. Did you about that time execute the power of attorney to Mr. Cunningham?—A. I did. I think it was a little later.

Q. Did you know at that time or learn from Mr. White how much he had paid?—A. Mr. White told me he had taken a claim in the same manner from some one who had dropped out and he had paid \$1,600 that they had expended up to that time.

Q. What steps did you take, if any, after receiving this advice to pay Mr. Cunningham, and what did you pay?—A. I forwarded a draft for \$1,600 with the request that I be allowed to take up one of these claims.

Q. Were you furnished a blank form of power of attorney to execute for the purpose of authorizing Mr. Cunningham to locate a claim for you?—A. Shortly after that I was.

Q. I show you a paper from the files contained in the records of the land office, which by stipulation are in evidence in this case, in coal cash entry No. 10, coal land survey No. 59, which is the power of attorney, and ask you if the signature to it is your signature?—A. It is my signature; yes, sir.

Q. It was executed by you on this date, January 11, 1905?—A. Evidently so; yes.

Q. I see it is acknowledged before—A. M. J. Flohr.

Q. On the same date, January 11, 1905?—A. Yes.

Q. Now, I will call your attention also to an affidavit attached to the foregoing power of attorney and ask you if that signature is yours?—A. It is.

Q. Subscribed and sworn before the same notary public on the same day?—A. 11th of January, 1905.

Q. Had you at this time had any conversation with Mr. Cunningham?—A. I had not.

Q. Had you had any conversation with respect to the making of this entry with any other person than Mr. White up to the time of making this affidavit?—A. Well, I said first that I had not had with Mr. Cunningham. I have no recollection of having had any—any conversation with any other entrymen besides Mr. White, and possibly Mr. Jones; that is, O. D. Jones.

Q. In any conversation with either of these gentlemen or any other person, at or prior to signing of this power of attorney and affidavit, did you have any understanding or agreement that in making this location and entry you did so in the interest of any person other than yourself or with any company or association of persons?—A. There was no such understanding at all.

Q. Or did you have any understanding with them or with anyone that you would make this entry, and at any time thereafter would convey it to a corporation then organized or to be organized or would hold it for joint operation or use?—A. I did not have any such understanding.

Q. I call your attention to the following language contained in the affidavit, to wit: "I further swear that I am now in the actual possession of said coal land through my agent and attorney in fact and make entry for my own use and benefit and not directly or indirectly for the use or benefit of any other parties." I ask you if the statement contained therein relation to the purpose to your entry was true?—A. It was.

Q. I show you now from the same government files application for patent and ask you if that is your signature?—A. It is.

Q. This purports to have been sworn to on the 21st day of February, 1906, before M. J. Flohr, a notary public. You swore to it at that time?—A. Yes, sir.

Q. And forwarded it to be filed in the land office?—A. Yes, sir.

A. In this application which you swore to at that time is the following language: "I make this entry for my own use and benefit and not directly or indirectly for the use and benefit of any other party." I will ask you whether, on the date of this affidavit, the fact therein stated was true?—A. It was.

Q. And had at all times prior thereto been true?—A. It had been.

Q. I now show you from the same files an affidavit which bears the file mark January 23, 1907, and purporting to be executed by you on the 20th day of September, 1906. I ask you if that is your signature?—A. It is.

Q. You swore to it at that time before M. J. Flohr, a notary public?—A. I did.

Q. I call your attention to the following language in this affidavit, to wit: "That said location was made for the sole use and benefit of the affiant and has ever since so remained his and in his exclusive control, and at no time prior to the location or at such time or since has affiant entered into any agreement, express or implied, or pledged himself by promise or otherwise, express or implied, by which the title to said land or any part thereof or any interest therein is to pass to any other person or association whatsoever." Was that statement at the time true?—A. It was.

Q. I call your attention to the following further language, to wit: "That in the event said claims go to entry in the U. S. land office at Juneau, Alaska, and the receiver's receipt for the purchase price issues, he will not be under any contract or obligation or promise to sell or convey said tract to any person or persons, or association, or to put same into any company or joint holding for any purpose, or to otherwise dispose of same, but will be free in every way to hold said tract to lease or sell it at any future time." Was the statement I have just read true at that time?—A. It was true.

Q. Have you been under any agreement, express or implied, inconsistent with either of the foregoing statements at any time prior to the date of that affidavit?—A. I have not.

Q. Did you subsequent to the filing of the last affidavit, which has been referred to in portions of the testimony as the "Love affidavit," pay your money for the purchase of your interest to the receiver at Juneau, Alaska?—A. I did.

Q. In what manner?—A. I had our bank, the First National Bank of Wallace, request our correspondent in Seattle to make arrangement with the bank at Juneau to pay this money; having no direct account with them we could not draw directly on Juneau.

Q. And that arrangement was made?—A. It was made, and payment was made and the receipt returned to me.

Q. I now show you a duplicate receipt signed by P. M. Mullen, receiver, bearing date March 13, 1907, acknowledging payment of the government price for coal land survey No. 59, known as the Plutocrat coal claim, and I will ask you if you received a duplicate of that receipt in due course following the date of it?—A. I did.

Q. About how long before this receipt was sent you did you send that money to the receiver?—A. Why, I could not say without looking up bank records.

Q. Well, approximately?—A. Well, I think it was only a short time before. That is, it was sent some time in the month of February, I think, as near as I can remember.

Q. I will ask you if you also at or about the same time received the paper which I show you, namely, the certificate of final entry signed by the register, John W. Dudley, bearing date March 13, 1907, a duplicate of which, with the preceding paper which I show you, is in the files of coal entry No. 10?—A. Why, I think I did; I could not say positively.

Q. When did you see Mr. Cunningham after you signed the power of attorney to locate for you?—A. Why, I think it was some time during the winter following; that is, after the first year, in the early part of 1905.

Q. Were you present at a meeting in the office of Finch & Campbell at Spokane held May 15, 1907?—A. Yes, sir.

Q. I show you a copy of the proceedings of that meeting [handing paper to witness]. Please examine it.—A. I think that is a correct statement of what took place.

Mr. HUGHES. The paper handed witness was Claimants' Exhibit No. 3.

Q. Now, do you recall how you came to be present at this meeting?—A. Why, I think either in conversation or through some notice from some other claimants that I was advised that they wanted to get together in Spokane on that day and talk over some matters that had come up, that Mr. Cunningham wanted to submit to us.

Q. Mr. Johnson, prior to the date of your final certificate, had you had any conversation with Mr. Cunningham or any other of the entrymen in which it was discussed, understood, or agreed that your claim upon receiving your patent should be held by you for the use and benefit in whole or in part of any other entrymen, or of all of the entrymen, or that any of the entrymen, or all of them, should have any interest in it, or that it should be held in conjunction with other claims for the purpose of joint operation as a coal mine, or that it should be transferred with other claims to a corporation, to be so owned or operated?

Mr. SHERIDAN. Mr. Commissioner, I must enter an objection to that style of question, inasmuch as it calls for one answer to about four or five different questions. I submit the witness could give us more clear answers by dividing it up into different questions as to these different transactions.

The COMMISSIONER. If the witness can answer the question I think it is proper.

Mr. HUGHES. I am asking who has, I think, intelligence enough to answer the entire question, and if there is a part of it he wishes to say no to, and a part yes, I assume the witness will be able to answer it. I am not cross-examining this witness.

A. I think I understand the question fully, but I would like to have the stenographer read it over.

(Question read by the reporter.)

A. Is that the end of the question?

Q. Yes.—A. I have not.

Q. After this meeting of May 15, 1907, were you informed in any way that the committee appointed at that meeting had consulted Mr. Wakefield; and if so, how?—A. I was either advised by the committee or by a letter from Mr. Wakefield that they had consulted him and decided or requested that I executed a deed which would be held and placed with the Union Trust Company provided the others did the same.

Q. Did you make such a deed?—A. I did.

Q. To whom did you send it?—A. I sent it to Mr. Wakefield.

Q. You were not personally present at the meeting held in July, 1907?—A. I was not.

Q. Did you learn of the fact that a committee had been appointed to go to Salt Lake?—A. Why, yes, I learned it; but I don't remember now just in what way.

Q. Well, I will ask you to look at Government Exhibit 10, which purports to contain a proposition between this committee and Mr. Guggenheim, and I will ask you if you ever saw a copy of that; if one was furnished to you shortly after the date of that instrument?—A. Do you want me to read it all through?

Q. Enough to satisfy yourself if you ever saw it, and whether you can say a copy was furnished you.—A. Well, I saw either that instrument—I was furnished with a statement similar to this, but without reading this through very carefully I could not say whether it is identically the same; and even then I might have my doubts.

Q. Well, what was furnished you purported to be the result of the meeting at Salt Lake?—A. Yes, sir.

MR. HUGHES. I think that is sufficient for my purpose at least, without your stopping to read it through, unless Government counsel desires.

Q. I will ask you what, if anything, you did with respect to the action of this committee—this proposal with the Guggenheims?—A. As far as any actual action on my part was concerned, I think I did nothing. I expressed my opinion as being dissatisfied with the proposition.

Q. To any other entrymen?—A. Yes; to several others.

Q. To which ones, if you can recall?—A. Well, Mr. White, Mr. Burbidge, and I think to Mr. Jones. I couldn't say just to whom. I can't remember all of them.

Q. O. D. Jones?—A. Yes, sir.

Q. Did you learn subsequently what was the nature of that proposition? What was done as far as the entrymen were concerned with respect to it?—A. I understood the matter was dropped entirely.

Q. What became of the deed you had sent to Mr. Wakefield?—A. It was returned to me and destroyed.

Q. Subsequent to this time did you meet any person purporting to be, or claiming to be, special agents of the Government?—A. I did.

Q. Who?—A. Mr. Glavis and Mr. Jones called on me at Wallace.

Q. When was that? Perhaps you can refresh your memory as to the date by looking at Government Exhibit 11.—A. Well, according to this it was the 5th day of March, 1908.

Q. Will you tell now what occurred between you and those gentlemen at that time?—A. They came into my office in the bank, and introduced themselves, and stated that they wanted to talk to me about my coal entry in Alaska, and we sat down and talked things

over very freely and frankly; and in the course of the conversation there were certain papers asked for and where they were in my power, and I had them, they were produced—as far as I know, everything they asked for. I brought them out there and allowed them to examine them, and I think they asked permission to make a copy of one of the papers, if I recollect right. They went away and came back again. I don't remember now whether the affidavit they submitted to me was when they were in here first or after they copied this paper and came back. They finally submitted an affidavit which had been signed by O. D. Jones and asked me to make an affidavit corroborating it. I explained that my situation was entirely different from Mr. Jones, because I knew nothing about the early transactions of the different locators up there and the different entrymen as I had come in considerable later, taking up a claim which was dropped by one of the others who could not see it through.

Q. Do you remember whether the affidavit which was presented to you to be signed was drawn by Mr. Glavis in your bank?—A. It was.

Q. I now show you that part of Government Exhibit 11 which purports to be—

The COMMISSIONER. Government Exhibit 11.

Q. Government Exhibit 11, which purports to be signed by you. That is your signature?—A. Yes.

Q. I call your attention to the language of this affidavit, the following language in this affidavit: "I have read the foregoing affidavit and know from my own personal knowledge that the contents thereof are true with respect to the mining claim in the Cunningham group, being the Plutocrat claim, except that I was advised by Henry White that one of the original claimants desired to give"—to send here—"give up his claim, and I then requested Mr. Cunningham to locate me on said claim. I was told by Mr. White I would have to reimburse the original claim owner. I did so, and I therefore have paid in as much as any other." Now, this affidavit was drawn up by Mr. Glavis after these conversations that you have referred to?—A. It was.

Q. And after you explained to him that you knew nothing about the early transactions?—A. Well, I think he drew the affidavit first in regard to that particular point, and that I raised that point that I knew practically nothing about the early transactions. Anything that I did know was entirely hearsay, and he talked it over with me and reread the affidavit and concluded my affidavit did not bear on that materially, and I thought so, too, and I finally consented to sign it.

Q. I think so, too. As I remember it, the witness's affidavit makes no reference to payments. Now, you speak in this affidavit of having read the Jones affidavit. I call your attention to this language contained in the Jones affidavit:

Nearly all of the 32 coal claimants are acquainted with each other.

Did you intend to corroborate that statement?—A. Well, at first thought I might have said yes. On careful consideration and after counting the names over that I knew, there were a great many that I did not know at all.

Q. Now, there is no express reference in your affidavit to the following language in the Jones affidavit. Inasmuch as you mention in that affidavit that you read the Jones affidavit I call your attention

to the following language from the affidavit of Jones in this Government Exhibit 11, to wit:

The matter of the formation of a company was never formally discussed at any particular meeting, but we have discussed this question among ourselves as we were well satisfied we could not handle the claims individually. Anyone who is at all acquainted with coal mining knows that one claim could not be handled profitably, especially in Alaska, where expenses are so great, and since the large expenses preliminary to the opening of a coal field would not warrant it. We have practically understood among ourselves that when title had been secured we would form a company and combine the entire group. This was positively fully understood. We had no written agreement or any written instrument whatever.

I will ask you if you intended in your affidavit to refer to this language; and if so, explain what was your understanding at the meeting with respect thereto.—A. Well, in casually going over it, I mentioned, and made the objection to Mr. Glavis, I thought it was very hard to corroborate Mr. Jones's affidavit, but my understanding of that particular part of Mr. Jones's affidavit was it had nothing to do with what was done prior to our getting our final receipts, but we had in an informal way in this meeting in Spokane discussed the proposition of forming a company to develop the property.

Q. Do you remember whether you told Mr. Glavis anything about that meeting at that time or whether that subject was brought up?—A. Why, I presume it was. We had a very free conversation about it in various ways.

Q. Do you recall what papers you showed him? You have spoken of his asking for papers. What did you furnish him?—A. Well, particularly, one was the Guggenheim proposition, copy of the Guggenheim proposition, and another was what we call the Hawkins report, and I think, in addition to that, he asked me if I had some statements from Cunningham as to the money expended, and that I showed him some of those. In fact, I presume I showed him all that I had there.

Q. The subject of these Guggenheim negotiations was fully discussed between you at the time?—A. It was.

Q. You told him all you knew about it?—A. Well, yes; I told him him all I knew about it and I told him it had been dropped entirely.

Q. I ask you now if all the information you gave him at that time in that conversation was correct—on your part was correct?—A. It was.

Mr. HUGHES. Take the witness.

Cross-examination by Mr. SHERIDAN:

Q. How old are you, Mr. Johnson?—A. Forty-eight. That is, I think I am 48. Do you want me to look it up to be exact?

Q. No; that is not necessary.—A. Well— [Laughing.]

Q. For how many years have you been engaged in the banking business, Mr. Johnson?—A. Nearly twenty-two years. It is twenty-two years and a fraction.

Q. And you are now the president of the First National Bank, in Wallace, Idaho?—A. I am.

Q. Mr. Johnson, I now hand you Government Exhibit 5 and ask you if you ever received such a statement as is set out in that exhibit from Clarence Cunningham; and if so, when?—A. I have no recollection of having received such statement. I could not say positively that I have not. There is no reason why I should, if you will notice the date on there.

Q. February 29, 1904.—A. Yes.

Q. I now hand you Government Exhibit 6, and ask you to state if you ever received such a document from Clarence Cunningham; and if so, when?—A. Why, I couldn't say. I think very likely I did.

Q. I invite—A. I see that my name don't appear in the list of claimants.

Mr. GRAY. I submit that some of them Mr. Johnson testified he gave to Mr. Glavis and I suggest that this is one of them. I don't know; you might call his attention to that.

Mr. SHERIDAN. That is just what I was just going to do.

Mr. GRAY. He said he got it from Mr. Johnson—I don't know.

Q. I call your attention to this certificate of Horace T. Jones and this of L. R. Glavis at the end of this exhibit and ask you to state if that refreshes your memory concerning this paper in any way?—A. From that I think very likely I had it, but I could not from memory say positively that I had or had not. I have no reason to question Mr. Jones's and Mr. Glavis's certificates.

Q. As far as you can now recall, this was one of the papers which was turned over to them for their inspection?—A. Yes.

Q. As certified by them herein?—A. Yes, sir.

Q. I now hand you Government Exhibit 7, which is the report of H. L. Hawkins upon the group of entries now under consideration and ask you to state if you ever received such a report from Clarence Cunningham; and if so, when?—A. I received the Hawkins report. I presume this is a true copy of it. The map at least is. I could not say as to just when I received it. I think it was some time in the spring of 1905. I don't know about the date on the report myself here.

Q. Can you recall from whom you received it?—A. No, I do not, but I presume it came through Mr. Cunningham's hand, naturally would.

Q. I now hand you Government Exhibit 8 and ask you to state if you at any time received such a statement from Clarence Cunningham? And for the purpose of refreshing your memory I invite your attention to a certificate of L. R. Glavis on the end of that exhibit.

Mr. HUGHES. Is that Mr. Hawkins's report?

A. I think I did receive a report the same as this.

Q. From Clarence Cunningham?—A. Yes, sir.

Q. This is one of the papers which was turned over by you to Mr. Glavis for inspection?—A. Yes; according to that certificate it is.

Q. Have you any recollection to the contrary?—A. None whatever.

Q. I now hand you Government Exhibit 9 and ask you to state if you at any time received such a statement from Mr. Cunningham; for the purpose of refreshing your memory I call your attention to the certificate by Lewis R. Glavis and Horace T. Jones on the end of the manuscript statement of this exhibit.—A. Well, I have no doubt but what I received this, and this was one given to them. As I stated before, I endeavored to show Mr. Jones and Mr. Glavis every courtesy which was due to agents of the Government and go into the matter frankly with them and show them what they wanted.

Q. I now hand you Government Exhibit 10, which is the Guggenheim memorandum and which is certified to as a correct copy by Horace T. Jones and L. R. Glavis, and ask you to state if that is a copy of a paper turned over to them by you for the purpose of

making a copy for their own use.—A. As I stated to the other attorney I would have to read this all through to say positively it was, but I have no reason to doubt it. I think it is a true copy of that paper.

Q. You have noticed—A. I have noticed the certificate; yes.

Q. I now call your attention to Government Exhibit 11 and especially to that part of it which consists of an affidavit corroborative in its nature and signed by you before Lewis R. Glavis on the 5th day of March, 1908, at Wallace, Idaho.—A. Yes.

Q. I ask you to state if you, before swearing to that affidavit, read it over.—A. I did. I say I did, Mr. Glavis read it to me. I think I also read it over before signing it.

Q. That is your signature? You have already admitted it?—A. Yes; that is my signature.

Q. Mr. H. T. Jones who is signed here as a witness was present at the time was he?—A. He was.

Q. I hand you Government Exhibit 29 consisting of the articles of incorporation of the Behring River Railroad Company and ask you to give us whatever information you have or had at any time since you became interested in that coal claim in Alaska concerning this organization and any negotiation that may have been had leading up to this organization?—A. Well, as a matter of fact I can give you very little information beyond the statements that has been made to me by Mr. Cunningham in various conversations, that in order to prevent some one coming in and locating a railroad line and bottling us up so we could not get out he thought it was very necessary to locate and make a survey of a railroad in to the coal claims.

Q. What was the earliest conversation in that particular that you had with Clarence Cunningham, as near as you can recall?—A. Why, it would be impossible for me to say when it came up. I paid very little attention to the written agreement, which came from Cunningham in the form that I was to make them, as near as I can recall it, and scan them quickly in a general way without going over matters in detail, and he would tell me what he was doing and what he thought should be done for the interest of everyone interested in that district; but I could not fix the date as to any particular conversation. Those things become mixed in time.

Q. Can you recall the year?—A. No; I don't think I could.

Q. You have examined Claimants' Exhibit No. 3 and Claimants' Exhibit No. 4, being the minutes of the two meetings which were held in the office of Finch & Campbell, in Spokane, Wash., on May 15, 1907, and July 16, 1907, I believe?—A. Well, as to the first meeting, I think I did. I did this—I don't know whether I have examined these minutes or not (referring to Claimants' Exhibit 4).

Q. Please examine Claimants' Exhibit 4.

Mr. GRAY. He was not present at that meeting. He testified he was not present at that meeting.

A. No; I was not present at the July meeting.

Q. The only meeting at which you were present then, Mr. Johnson, was, as I understand you, this one of May 15, 1907?—A. Yes, sir.

Q. Were you notified by any communication or otherwise of the meeting of July 16, 1907?—A. I knew that such a meeting was to be held, but I could not say in what manner I received the information,

whether a formal notice or simply some one of the other entrymen telling me they were going to the meeting.

Q. Did you receive any communications after this meeting concerning what had been done afterwards?—A. I don't know whether I received anything until we got what we called the Guggenheim proposition.

Q. Did you, at that time when you received this Guggenheim proposition, or been notified of it, receive a copy of these minutes?—A. I could not say whether I did or not.

Q. I observe in Claimants' Exhibit 4, being the minutes of the meeting of July 16, 1904, at which you said you were not present under the head of those represented by proxy, the name of Johnson; does that refer to you?—A. I presume that it does.

Q. Did you give a proxy to anyone to represent you at that meeting?—A. Why, I certainly must have done so, although I have no recollection of it.

Q. Did you preserve any record of that proxy?—A. No, sir; I did not. The secretary of the meeting will probably be the only one who would have anything to show for it.

Q. Can you recall to whom you gave that proxy?—A. Let me look at the list of those persons and I might. [Examining paper.] No; I can not. My memory has absolutely slipped me. The only one of the firm shown who was there was Mr. O. D. Jones, but I have no recollection of ever giving him a proxy; but yet I may have done so.

Q. You have no reason to question the accuracy of the statements appearing in these minutes that the proxy was given?—A. No, I have no reason for questioning it.

Q. I now call your attention to Government Exhibit No. 3, wherein is found a copy of what has been referred to as the Cunningham journal and on page 1 of which there is a statement to the effect that each subscriber shall have one-eighth of his stock issued to Clarence Cunningham in consideration for his services in securing said land. What have you to say concerning that statement and what is your knowledge concerning it?—A. I have no knowledge whatever of this journal or anything it contains. That is, I have none, personally. Of course I have seen some newspaper comments since these proceedings begun.

Mr. GRAY. A little louder.—A. I say I had none. I have seen some newspaper comments on this since this hearing commenced.

Q. Did you have any such agreement as referred to on page 1 of the journal with Mr. Cunningham?—A. No; I did not.

Q. What agreement, if any, did you ever have with him concerning compensation for his services?—A. I never had any direct agreement with Mr. Cunningham at all. The matter was never mentioned between us. It was my understanding that when I applied for this claim that Mr. Cunningham was being paid a salary and necessary expenses for looking after the interests of each one who had located these coal claims.

Q. Well, did you understand you were to contribute a payment to his salary?—A. I naturally thought I was to contribute to that, and also such necessary general developments as a new country required in the way of trails and provisions, and horses, or anything of that sort, and prove the coal measures, or anything of that sort.

Q. That is, on these 33 entries generally?—A. These different entries, in order to prove in a general way if we had anything in there of value.

Q. Did you have any understanding or agreement with any other entrymen concerning the payment of a salary, or any other financial settlement with Clarence Cunningham for his services?—A. As a matter of fact, I never had any arrangement with anyone, either Mr. Cunningham or anyone else, except simply in a general way formed this opinion that that is what his compensation amounted to, as I stated before, and I thought I was to stand my share of that compensation.

(And thereupon the further hearing of this inquiry was adjourned until December 6, 1909, at 9.30 a. m.)

DECEMBER 6, 1909—9.30 A. M.

INQUIRY RESUMED.

Appearances: Mr. William J. McGee, United States special commissioner; Mr. James M. Sheridan and Mr. William B. Pugh, counsel for Government; Mr. E. C. Hughes and Mr. John P. Gray, counsel for claimants.

FRANK F. JOHNSON on the stand.

Cross-examination (resumed) by Mr. SHERIDAN:

Q. Mr. Johnson, will you give us briefly the substance of your first conversation that you had with Clarence Cunningham concerning this matter?—A. Why it would be impossible for me to tell you when it was or what the conversation bearing on this might amount to; might have been—for the reason that I talked with Mr. Neill and Mr. White and Davenport and others that were interested up there, and afterwards when I became interested with Mr. Cunningham, but everything was so mixed in together that I could not say what conversations were with Mr. Cunningham and what were with others.

Q. Now, as nearly as you can recall, you had these conversations with the other gentlemen whom you have mentioned prior to taking that coal claim, is that it?—A. Yes. I had never discussed coal lands with Mr. Cunningham until after I became interested in them.

Q. Now, can you give the substance of the conversations you had with these other parties prior to becoming interested in the claims?—A. Well, I can in a general way.

Q. In a general way?—A. Well, simply that they told me that Cunningham had found this coal and that a party of them had located claims there, and that they thought it was a very good thing; particularly Mr. Neill, who had been up there himself on the ground, and Mr. Davenport. They believed it was going to turn out to be valuable coal land; that Mr. Cunningham was acting for them as their agent up there.

Q. Now, Mr. Neill and these other gentlemen whom you have mentioned and with whom you discussed this matter, are business men, are they?—A. They are.

Q. Did they take up with you the details of the possible expense of developing and operating this property?—A. I don't think they

ever took up the matter of expense of opening it up for establishment as to development, or as to getting it on a producing basis.

Q. Did they say anything to you about the method by which it should be developed?—A. No; I don't think they did. I think the only conversation I had—Mr. Neill expressed an opinion at one time that it ought to cost about \$2,500 a claim for all necessary work on the land up to the time we would have title.

Q. Then, am I to understand that from the time you became interested in your claim in Alaska you did not discuss with Mr. Cunningham or any of the other entrymen any of the questions of operation of this coal land?—A. I could not say positively that there never was any general discussion in regard to that matter, but there never was anything that went into it thoroughly until after we got our receipts.

Q. What did you propose to do with this claim when you did take it up?—A. Well, I took it on a basis of a remark that was made by Mr. Neill to me in which he said it was a good thing to get this coal and leave it there for the children. He says, "We will never get anything out of it so long as we live."

Q. That was your idea?—A. That was my idea.

Q. I now hand you, Mr. Johnson, what is known as the Love affidavit which is already in evidence under stipulation, with the original entry papers in this case. I believe you already identified that as your signature? [Hands witness paper].—A. I signed that; yes, sir.

Q. You received this affidavit by mail as I understood you?—A. Why, I think so. I don't believe that question was asked before, but that is my recollection, I received it by mail.

Q. Did you receive a letter with it?—A. Why, I presume I did, but I don't remember now.

Q. I hand you Claimants' Exhibit 5 and ask you to state if this is practically the same as the letter which accompanied the Love affidavit?—A. I could not say. I haven't any recollection as to what letter I received with it, but if any letter accompanied it I would imagine that would be about the substance of the letter.

Q. I now hand you Claimants' Exhibit 3, consisting of the minutes of a meeting held in the office of Finch & Campbell, Spokane, Wash., May 15, 1907. I ask you to state, Mr. Johnson, what knowledge you had of such a meeting, if any.—A. I was present at the meeting.

Q. I ask you to scan those minutes set out in this exhibit and state whether or not they set out correctly what transpired there as you recall it. [Witness examines paper].—A. I think that practically covers the meeting, except my understanding of this last clause. It says here: "That thereupon, on motion of Mr. Sweeney, seconded by Mr. Finch, the chairman was authorized to appoint a committee of five, who should organize a corporation for the purpose of acquiring coal claims owned by those present and those of such other owners as might desire to join in the corporation." My understanding of the discussion at the time was that this committee was appointed with instructions to get legal advice as to whether or not we were in a position to organize a corporation, and whether, having our receipts, we were entitled, without infringing on our—that is, without impairing our title in any way to do this; and if in their judgment they thought best, they go ahead, and ask for these deeds. That is the only thing there. It makes it positive.

Q. I believe you said with reference to the meeting of July 16, 1907, that if you gave a proxy as appears in this exhibit to any person to represent you, you can not recall distinctly who that person was?—A. No, I could not—now my recollection is that Mr. White had said he would go to this meeting, and I had told him I would give him a proxy, but when he did not go I evidently gave it to some one else.

Q. Does the next to the last clause in these minutes, which reads, "All of the members present agree to ratify any action taken by such committee," express what your understanding was concerning their power?—A. I was not present. You mean that I would consider that my proxy authorized that?

Q. Yes.—A. I certainly would not. That says, though, Mr. Sheridan, that the members present, but does not say that those represented by proxy.

Q. Well, I just wished for your views on it, Mr. Johnson, that is all.—A. I would not want to assume that authority if I was acting as proxy for some one.

Q. About how much altogether, Mr. Johnson, did you expend on this claim of yours?—A. Well, it is my recollection that up to the time of paying for the land I had paid out about \$2,200 or \$2,300.

Q. Mr. Cunningham called on you pretty regularly for remittances for that purpose, did he?—A. From time to time; yes.

Q. About how frequently in a year did he draw on you?—A. Lets see—oh, I couldn't state. I might try to make some estimate by figuring the length of time, but it would be pretty hard to tell.

Q. Did he draw on you as often as twice in a year?—A. I think perhaps as often as that.

Q. Probably oftener in some instances?—A. Yes, I think probably oftener.

Q. For what was that money furnished?—A. Well it was furnished for the development of my own claim; for the general development of the district; proving coal measures and going into making such improvements as are necessary in every district. Much on the same line as when I first went to the Coeur d'Alene country. If we wanted a road we had to go down in our pockets and dig up the money and build the road. There was no property to tax and everybody was interested in it.

Q. What developments did you direct Mr. Cunningham to make, if any, on your claim?—A. Well, such as the law might require; that is all. I never gave him any specific instructions any further than what might be contained in that power of attorney.

Q. You left that to his judgment?—A. Left it to his judgment entirely.

Q. Do I understand you to state, Mr. Johnson, that at any time since you became interested in this coal claim of yours in Alaska, and down to and including the time of final receipt, you never did discuss with any of the entrymen now concerned or with Clarence Cunningham, in the capacity as your agent, the question of jointly developing these claims for the purpose of economy or otherwise?—A. I never discussed—I might possibly have made a remark that it would be years before the country would be developed and it would probably have to be developed as a whole, but there never was any discussion that would bear on the subject as far as we were directly concerned.

Q. Was that your idea of the matter when you became interested in the claim?—A. Yes; when I became interested I figured that it was something away ahead; could not realize what the country was there and would develop to where we would ever have a proposition from anybody to use that coal for years to come.

Q. Did you have any such talk as just indicated with Mr. O. D. Jones, and Mr. White, when you first became interested up there?—A. You mean in what way?

Q. Concerning the possible development of your claim?—A. I have not. If I remember right, I think Mr. White expressed the same opinion that Mr. Neill did to me, that it was a good thing to get the title, and we probably would never get anything out of it, but it would be a value to our children.

Q. What arrangement, if any, did you have with Clarence Cunningham as to compensation for his services?—A. Personally I had none whatever. You see I went in there later and I took it for granted that these arrangements had all been made by the other parties that were in in the beginning.

Q. Now, from what you know of the situation in this particular coal area in Alaska now concerned, did you at any time since you became interested in your coal claim or do you now consider it feasible to operate 160 acres of coal land in that field?—A. It certainly would not be unless some one put a railroad to it.

Q. Why not?—A. There would be no means of getting it out.

Q. If there were a railway do you think you could operate that 160 acres individually?—A. That would depend entirely on the claim. There would be some claims there that could not be operated individually. Of course I have not been on the grounds and I am not familiar with it.

Q. How did you transmit the funds to Mr. Cunningham?—A. Why, for his ordinary wants he drew through his bank in Seattle.

Q. What bank?—A. The National Bank of Commerce, I think it was, and the drafts on myself and some others that lived in Wallace were sent direct to our bank because they happened to be our correspondents, and we paid the drafts through the First National Bank of Wallace.

Q. Did you ever have any correspondence with any of the entrymen concerning your claim?—A. I don't think I ever did. It might have been mentioned casually in some letter covering some other matters I had with them, but the mere fact it was mentioned was something out of common.

Q. If you did have such a correspondence, would it be preserved in your records?—A. Why, more than likely. I keep a press copy of nearly all letters of any consequence which I may write.

Q. Now, Mr. Johnson, in the matter of these papers which you turned over to Mr. Glavis and Mr. Jones for their inspection for the purpose of making copies that they might need, did Mr. Jones or Mr. Glavis in any way take advantage of you in obtaining those copies or did you voluntarily give them to them for that purpose?—A. As I stated before, we talked the matter over very freely and frankly, and having done nothing I considered was any infringement of the law—at least there was no intention on my part in any way of evading, either technically or any other way, the law—I had nothing

to conceal and I gave them what information they asked for and anything that was relevant to it that they wanted.

Q. They made these copies and returned the other papers to you which you had given them?—A. Yes.

Q. Now, you stated that you were called upon to pay about \$1,600 to take up a claim of Mr. Davenport's, at the point where he dropped it, and when you located it as yours?—A. Yes.

Q. What did you understand you were paying that \$1,600 for?—A. Well, the actual expenses that Mr. Davenport had been to on this claim. That is what he had expended in connection with the claim.

Q. And with the general development of the other entrymen claims adjoined?—A. Well, they covered the general opening up of the country and going in and going over it. When you say Davenport's claim—of course I did not get Davenport's claim. Where they told me that Mr. Davenport was going to draw out, or wanted to get out, there were others that did, and it was another claim that I received.

Q. Do you know who originally had the claim which you obtained?—A. No; I do not.

Q. Are you financially interested with any of the other entrymen now concerned in any business matters?—A. Yes; a number of them.

Q. With which ones?—A. Well, directly, in our bank up there, Mr. Davenport—I don't mean Davenport—Mr. Campbell is a stockholder, A. D. Campbell; Mr. White is a stockholder and vice-president of the bank; Mr. R. K. Neill is a stockholder in the bank; and in a very small way I am a stockholder in some companies that both Mr. Finch and Mr. Campbell are stockholders in, and I believe one or two of the other parties may have stock in some of these companies; I could not say positively.

Q. Can you state how long you have been so associated with these gentlemen?—A. Well, I have been associated with Mr. White for seventeen years and with Mr. Neill the same time. We organized the bank together. Mr. Campbell came in a short time afterwards. He was under contract not to start a bank in opposition to other parties at the time we started, but that failed in '93 and he joined us some time afterwards.

Q. And the other matters you mentioned?—A. Well, these were mining stocks. It would be hard to tell, I having been a stockholder in the Hecla Company for, I suppose, ten years; eight or ten years, something like that.

Q. Have any of these gentlemen been associated in that company for that length of time?—A. A good many of them were associated before I became a stockholder.

Q. And are still?—A. Well, I think they are.

Q. Who are they?—A. Well, I said Mr. Finch and Mr. Campbell, and I thought there might be some others, because I don't know. The Hecla is a large company and the stock is scattered.

Q. This business association of which you have spoken still continues, as I understand?—A. It does.

Q. Have you any other interests in Alaska, Mr. Johnson?—A. None whatever. Well, I say none. I guess my other interests are terminated. I was associated with Mr. Cunningham in a little deal up at Katalla, in a town site, but I think that fell through.

Q. When were you interested in that?—A. Why, I don't remember just what time we went into that. I think it was just about the

time we got our receipts, a little while before; that is, the fall before we got our receipts.

Q. Your final receipt for your coal entry?—A. Yes.

Q. What was your idea in becoming interested in that?—A. Well, he came down to state that the Copper River Railroad was going to come in there and make terminals in there. He had a chance to get hold of some ground and get a water right that would furnish the water for this town, and also power enough to furnish electric light, and that he thought it was a new country and developing rapidly and there was a chance to make a good big turn without very much investment. I agreed to put a small amount into the company that he formed for that purpose.

Q. Who were the members of that company?—A. I could not say. I think Mr. Page was one. I think Mr. Fred Moore, and Mr. O. D. Jones, and others.

Q. Others who are some of the entrymen now concerned?—A. I don't know whether they are entrymen or not, but there were some others in the company.

Q. Was the town ever incorporated? A. Why, not that I know of. That is, I could not give you much information as to that. We intended to go in there, and then the storms came, you know, and broke up that breakwater and changed all the plans of the railroad, and the whole thing went up in the air.

Q. Do you know of any records in existence concerning this town site and its purpose?—A. No, I do not. Mr. Cunningham was looking after that.

Q. Did you execute a deed to be placed in escrow, Mr. Johnson, for the purpose of this question of building a road into the coal claims, as already set out in the minutes?—A. Well, I executed a deed and sent it to Mr. Wakefield, but that was after that July meeting.

Q. Now, what became of that deed?—A. It was returned to me and destroyed.

Q. When was it returned to you?—A. Why, I could not say without looking it up. Now, I don't know whether I ever had any correspondence returning it.

Q. Was it destroyed by you in the year 1907?—A. That was executed—I could not say. It would be impossible. I think that if I were home I think I could tell when it was destroyed.

Q. Now, as nearly as you can recall, was it destroyed shortly after this deal fell through with the Guggenheims, as testified to by you?—A. Well, I could not say exactly. What you would say "shortly," I think it was destroyed within a few months after that.

Mr. SHERIDAN. That is all.

Redirect examination by Mr. HUGHES:

Q. Mr. Johnson, what was your understanding as to the compensation of Mr. Cunningham for his services and expenses in locating your claim, and not what had been expended at the time you made the original payment of \$1,600?—A. Why, I think I stated on examination that in a general way I understood Mr. Cunningham was receiving a salary and expenses for looking after the interests of the different claimants up there, and that we were all contributing to it.

Q. It was your understanding when you paid the \$1,600 that that was the portion of such expense as had been incurred for the claim you were taking by the person who was dropping out?—A. Yes.

Q. As to the matter you referred to at Katalla—that is, the power and electric-light plant that was contemplated—you don't know whether any other town site was ever secured or laid out at Katalla yourself, do you?—A. No; I do not.

Q. You simply knew that it was at that time proposed that this railroad would make its sea terminus at Katalla and that this project was one for securing a site for a power plant and for an electric-light plant or some land connected with it?—A. Yes.

Q. You invested your money in that project at the suggestion of Mr. Cunningham?—A. I did.

Q. And your money has never been returned, I take it, from what you say?—A. No; it was not.

Mr. SHERIDAN. Of course I don't wish to be bungling up the record with objections, but I do wish to place of record the fact that these questions are delightfully leading.

Mr. HUGHES. I assumed they were delightful to counsel, or else he would object. That is all.

Recross-examination by Mr. SHERIDAN:

Q. This morning on your cross-examination I understood you to say you had no arrangement with Clarence Cunningham concerning his compensation, and that you assumed that it had been already provided for in the prior arrangements made with him, and now on redirect you state you had an understanding as to salary?—A. I think I stated in there that in a general way I understood he was being paid a salary. Your question I understood you to mean, whether I had had any direct understanding with Mr. Cunningham myself.

Q. So you did understand from the time you became interested in your claim, and used Mr. Cunningham as your agent, that he was under salary?—A. That was my understanding; yes.

Q. Did you know whether or not he was to have a one-eighth interest in the claim of all of the other entrymen also?—A. It never was mentioned to me, no; that he was to have any in mine.

Q. You never made any such arrangement?—A. I never made any such arrangement.

Mr. SHERIDAN. That is all.

(Witness excused.)

ORVILLE D. JONES, a witness produced on behalf of the claimants, after being duly sworn, by the commissioner, testified as follows:

Direct examination by Mr. GRAY:

Q. State your name, your residence, and your occupation.—A. Orville D. Jones, Wallace, Idaho.

Q. Your occupation?—A. Why, nothing particular at present.

Q. What business have you been engaged in?—A. In the mercantile business.

Q. Where?—A. Wallace, Idaho.

Q. How long?—A. Twelve or fourteen years.

Q. How long have you lived in that country, Mr. Jones, in and about Wallace?—A. I have been in that country up there for the last twenty-five years. I have lived in Wallace since 1888, I think; 1887-1897.

Q. Do you know Clarence Cunningham?—A. Yes, sir.

Q. How long have you known Clarence Cunningham?—A. Twenty-five years, I think.

Q. Where and under what circumstances? Just state whether or not you ever engaged in business with him up there or otherwise. Where did you know him, Mr. Jones?—A. I knew him first in Murray, Idaho.

Q. When?—A. In 1884.

Q. Had you been acquainted with him right along? Have you seen him off and on ever since that time?—A. Yes.

Q. What did you know about Mr. Cunningham prior to becoming interested in this coal claim of yours?—A. Why, he did more or less business with me, and I knew him in different mining projects in the Coeur d'Alene country during that time and prior.

Q. Mr. Jones, state in your own way when and under what circumstances you first authorized Clarence Cunningham to make a location of a coal claim in Alaska for you.—A. I don't remember the year exactly, but he came into my place of business and talked over the matter of coal claims up there. He had been up there and thought pretty well of it, and I talked with him awhile in my place of business and I went down to his office; he had a little office down there. And he showed me some oil that he had brought down with him. He had a little bottle of oil, and he thought it would be a good thing to take up a claim up there. I suppose we talked an hour or so down there, and finally I concluded to take a chance on it.

Q. I want you to, as definitely as you can, state what talk you had there, and arrangements, if any, you made with him.—A. Well, there was no particular arrangement, except I thought I would take a flyer with him of the deal up there. The way he explained it he thought it was good, in his judgment, and I relied on his judgment. I really did not pay much attention outside of that.

Q. Did he tell you how much money you would have to put up at that time?—A. I don't think he did, hardly. You mean at once?

Q. Yes, at once.—A. Why, I think he figured \$500. Figured on getting some—buying some squatter's rights or something up there on the ground to avoid any controversy.

Q. At that time did you speak to anyone else about going in on the coal claims there?—A. With him you mean?

Q. Yes.—A. Why, after I made the deal I asked my partner, Hayes; we was in business together; I asked him if he wanted to go in and he finally concluded he would go in with me as long as we was jointly in business.

Q. And take an interest with you in your coal claim?—A. Yes, sir.

Q. Now at that time what understanding, if any, did you have with Clarence Cunningham as to what he was to receive for making the location?—A. None whatever.

Q. You had known Mr. Cunningham all these years? What did you know about his general reputation in the community, Mr. Jones?—A. Well, such that I had perfect confidence in him. I had known him to be in a great many mining deals, and I never knew him to beat a working man out of a dollar in his life, and I thought that was a pretty good reputation.

Q. Subsequent to that conversation did you pay him any money for the purpose of making this location for you?—A. Yes, sir.

Q. At that time other than the arrangement that was spoken of with your partner Hayes did you have any understanding or agreement with any other person than Mr. Hayes by which any other person was to have any interest in this coal claim with you, or did you have any understanding that you would unite or consolidate your coal claim when it was located, or at any time after location, with any other claim?—A. No, sir.

Q. For any purpose?—I did not.

Q. Calling your attention, Mr. Jones, to the power of attorney acknowledged by you on the 14th of October, 1904, before Stanley P. Fairweather, which I find among the application papers, I will ask you if you executed and acknowledged that power of attorney?—A. Yes, sir; that is my signature.

Q. I call your attention also to the affidavit which was executed before the same officer on the same day [witness examines paper].—A. Yes; that is my signature.

Q. You executed that affidavit also?—A. Yes, sir.

Q. I call your attention particularly to the following language contained in that affidavit, "That I further swear that I am now in the actual possession of said coal land through my agent and attorney in fact, and make entry for my own use and benefit and not directly or indirectly for the use or benefit of any other party." Was that true at the time you made this affidavit?—A. Yes, sir.

Q. What have you to say about the interest which you say Mr. Hayes had with you originally in this coal claim?—A. Well, he had taken an interest, but before that Mr. Cunningham came and told us that there had been a law passed, or something to that effect—I forget just what it was—that we could not hold it jointly, and at that time we did not consider it very valuable, so it came up for one of us to take it. I simply bought him out, and paid him for it.

Q. Since that time has Mr. Hayes had any interest in this coal claim?—A. No, sir.

Q. I call your attention to the application for patent, sworn to by you on the 29th of January, 1906, and ask you if you executed that instrument [witness examines paper]?—A. Yes, sir; that is my signature.

Q. I call your attention to the following language in that affidavit, Mr. Jones: "Through him," referring to your attorney in fact and agent, "I make entry for my own use and benefit and not directly or indirectly for the use and benefit of any other party." Was that statement true at the time you made it?—A. Yes, sir.

Q. Had you, Mr. Jones, at any time prior to that time save and except—I except in these questions the interest which Mr. Hayes first took—any contract or agreement or understanding with any person by which any other person than yourself was to have any interest in that coal claim after you acquired title?—A. No, sir.

Q. Were you under any promise or obligation or understanding whatsoever with any person or persons, association, or corporation by which any interest therein in your coal claim should inure to the benefit of any such person or persons, association, or company or corporation?—A. No, sir; I was not.

Q. Were you under any promise, contract, or agreement, express or implied, whereby you were to consolidate, unite, or combine your claim with any other claim or claims of any other locators, or any in-

terest in your claim with any other claim for the purpose of joint operation or mining?—A. No, sir.

Q. I call your attention to the affidavit here referred to as the Love affidavit, executed on the 21st of February, 1907, before M. J. Flohr, a notary public, and ask you if you executed that instrument and if that is your signature?—A. Yes, sir; that is my signature.

Q. I call your attention to the following language included in that affidavit: "That said location was made for the sole use and benefit of the affiant, and has ever since so remained his and in his exclusive control. That at no time prior to location or at any time subsequent, has affiant entered into any agreement, express or implied, or pledged himself by promise or otherwise, express or implied, by which title to said land or any part thereof or interest therein, is to pass to any other person or association whatsoever." I will ask you if that is a correct statement of the facts?—A. Yes, sir.

Q. "That in event said claim goes to entry in the United States land office at Juneau, Alaska, and the receiver's receipt for the purchase price issues, he will not be under any contract or obligation or promise to sell or convey said tract to any person or persons, or association, or to put same into any company or joint holding for any purpose, or to otherwise dispose of the same, but will be free in every way to dispose of said tract, to lease or sell the same at any future time." Is that true?—A. Yes, sir.

Q. "That he does not know any person or persons or association or individual that contemplates the leasing or purchasing of said tract."—A. No.

Q. Had you prior to that time or at that time entered into any agreement or contract or had any understanding which was inconsistent with the statement contained therein?—A. Nothing outside of when I first went in with Mr. Hayes; outside of that.

Q. And that had long prior to the execution of this affidavit been terminated?—A. Yes. I did that before I had taken out anything at all; before I applied for patent.

Q. Were you under any promise or obligation or any understanding at the time you executed that which was inconsistent with the language and facts stated in that affidavit?—A. Not to my knowledge.

Q. Do you recall how you paid for this land to the United States?—A. I don't believe I do. I sent a draft—whether I sent it through the First National at Wallace to the receiver direct, I am not sure. I don't remember. I think at first we thought we had to send the money, the cash. Afterwards there was arrangements made that we could pay by check some way through a Seattle bank, if I am not mistaken.

Q. You did pay to the Government the purchase price for said land, and received final certificate of entry?—A. Yes, sir.

Q. Which was dated on or about the 23d of April, 1907?—A. I disremember the date.

Q. Well, that is the date which is shown by the duplicate receipt which is here in the papers. Referring now to the time when you received your final certificate of purchase, had you at that time or prior thereto made any contract or agreement or had any understanding by which the title which you should secure to your coal claim should inure in whole or in part to anyone other than yourself?—A. No, sir.

Q. Were you at that time under any promise or obligation or understanding, either express or implied, by which you would convey that claim or any interest in it at any time in the future to any company, corporation, association, or any other person than yourself?—A. No, sir.

Q. Were you under any agreement, understanding, obligation, or promise to combining it or any part of it or any interest in it with any other coal claims or with any other lands of any person whatsoever?—A. No, sir.

Q. Did you at that time have the absolute dominion, or did you not, over that claim without any limitation whatever?—A. Yes, sir.

Q. I hand you Claimants' Exhibit 3, minutes of a meeting of the owners of coal claims in Kayak district, Alaska, held on May 15, 1907, and ask you to look at that and state whether or not you were present [witness examines exhibit]?—A. Yes, sir; I was present at that meeting.

Q. Does that copy of the minutes which I have handed you state as near as you can remember what occurred at that time? Is it a correct transcript of the proceedings as nearly as you can remember?—A. I think so. I don't know just what did transpire. As near as I can tell that is about what happened.

Q. I call your attention to the following therein contained: "Thereupon, on motion of Mr. Sweeney, seconded by Mr. Finch, the chairman was authorized to appoint a committee of five who should organize a corporation for the purpose of acquiring coal claims owned by those present and those of such other claim owners that might desire to join the corporation; the committee to secure deeds to the mining claims and to issue receipt therefor and to take all necessary steps to complete the organization of the company ready for the transaction of business." I will ask you whether or not you had ever prior to that time any understanding or agreement with any other claim owners or any other person that you would organize or form a corporation to take over your coal claim or any other claims?—A. No, sir.

Q. Subsequent to that time, Mr. Jones, did you prepare and execute a deed and forward it to anyone; if so, to whom?—A. Yes, sir.

Q. Who to?—A. Somebody here in Spokane; bank; I forget who it was now. I think it was a lawyer by the name of Wakefield.

Q. A lawyer?—A. Yes.

Q. Did you attend a meeting held here in this city on the 16th of July, 1907. I hand you herewith Claimants' Exhibit 4, and ask you if these are the minutes of the meeting which you attended, or substantially so?—A. Yes, sir.

Q. You were present there were you, Mr. Jones?—A. Yes, sir.

Q. I will ask you, Mr. Jones, to state in your own way what occurred at that time.—A. Well, I took very little part in the meeting, so far as discussing the matters. Perhaps not at all, because I was not really in favor of the proposition.

Q. What proposition?—A. That was made to confer with the Guggenheims; but there were others there that I presumed knew more about the proposition than I did, and I rather turned it over to them.

Q. At that time, as the minutes show, a committee was appointed to go to Salt Lake and hold a conference with some representatives

of the Guggenheim company. What was your understanding of the powers of that committee?—A. Well, my understanding of the powers was simply that they were conferring to see what might possibly be done. I did not understand they had power to act for any of the other members. I did not feel that way with reference to myself.

Q. Did you agree to ratify any action which might be taken by that committee?—A. No, sir; I did not.

Q. Subsequent to that time did you receive or see a copy—did you take any part in the discussion yourself, Mr. Jones?—A. No, sir; I did not.

Q. Subsequent to that time, after this committee had visited Salt Lake, did you ever see or receive a copy of a memorandum which they had there signed; I hand you Government Exhibit No. 10, and refer you to that as the memorandum?—A. Why, I suppose I did. I am sure I can not recall exactly. I have probably got it, yes.

Q. Did you see it and know what the terms of it were at or about that time?—A. Well, I suppose I did, but really I can not recall.

Q. You knew some kind of a proposition had been signed by that committee at Salt Lake, did you?—A. Well, in a general way, I guess I did. I don't really remember, though.

Q. Just state now whether or not, when you found out that such a proposition had been signed, whether you agreed to it?—A. No, sir; I did not.

Q. What action you took on it?—A. I took no action.

Q. Did you discuss matters with any of the others of those who were present, or any other coal-claim owners in that district who were present at the meeting in Spokane?—A. I don't remember whether I did or not.

Q. You don't remember it?—A. No; I do not remember it, I am sure.

Q. Did you discuss this Guggenheim proposition with any others who were interested?—A. You mean from our district up here?

Q. Yes; or with anyone; I do not care who it was?—A. Well, I am sure I don't know whether there was anyone there outside of myself. I really don't remember.

Q. Not after the meeting, but I say after you heard of this proposition which had been made at Salt Lake City, did you discuss the matter with any other person?—A. I think, rather, I did with Mr. Johnson. But not very much discussion. I simply told him I did not like the proposition at all.

Q. Did you ever agree to that proposition, Mr. Jones?—A. No, sir; I did not.

Q. Subsequent to that time did you receive back at any time—what was done with the deed that you sent out to Mr. Wakefield?—A. Well, I got it back. I don't remember how long it was or what time it was. I wrote to Mr.—the man down here—what's his name?

Q. Mr. Wakefield.—A. To Mr. Wakefield and he returned it.

Q. What did you do with it?—A. Why, I don't remember what I did with it. I suppose I destroyed it. I don't know what I done with it. I don't remember seeing it since.

Q. Do you recall meeting Mr. Glavis and Mr. Jones the early part of 1908, as special agents of the Government in Wallace?—A. Yes. I don't remember the date.

Q. Just state under what circumstances and what occurred.—A. Why, they came into the store and asked me my name, I think, and if I had a coal claim in Alaska, and I told them I did; and they asked me if I had any data with reference to or correspondence on it, and I told them I did not remember receiving any. We had quite a discussion there. They claimed that they were looking up the matter to straighten the matter out in order to get the titles to our land, and if I had any data in relation to it they would be glad to have it. I told them that I had it down at the house; that is, in the afternoon, and they asked me when I could get it up, and I told them in the morning; and they asked me what time would I be up in the morning, and I told them probably about 7 o'clock, and I told them it was agreeable; but all I could find was the last statement he sent out, which was a statement of the receipts and expenditures, and I brought them up to them, and they made a copy—or I say they made a copy—I suppose they did; and then Mr. Glavis asked me if I would sign a statement covering the facts we had talked over, and I told him I would like to see what the statement was, and he asked desk privileges, and so he walked back to the desk and he wrote out a statement, which I signed.

Q. I hand you Government Exhibit 11 and ask you if that is your signature?—A. Yes, sir.

Q. And I will ask you if that is the statement that you signed at that time. Just look at it.—A. That is the statement.

Q. I call your attention to the following language in this affidavit, Mr. Jones:

Cunningham was agent of 31 other entrymen who, like myself, advanced various sums of money; the money was expended by Cunningham to develop and improve the coal field as a whole. Nearly all of the 32 claimants are acquainted with each other.

I will ask you what you have to state as to that?—A. Well, that—I guess I read it very carelessly, because I am not acquainted with very many of them.

Q. (Continuing to read:)

The matter of the formation of the company was never formally discussed at any of our meetings, but we had discussed this question among ourselves, as we were well satisfied that we could not handle the claims individually. Anyone who is at all acquainted with coal mining knows that one claim can not be handled profitably, and particularly in Alaska, where expenses are so great, inasmuch as the large expense of preliminary opening coal fields would not warrant it.

I am reading from Mr. Jones's affidavit which he made at that time:

We have, therefore, understood among ourselves that when title had been secured we would form a company and combine the entire group. This was, however, positively the only understanding we had. No written agreement or any written instrument whatever.

What understanding did you refer to there?—A. Why, it was merely talk as we met each other at different times; what we might do and what was best to do with the claims. That is what I mean to convey there.

Q. Had you had any understanding whatever prior to the meeting in May, 1907?—A. No, sir.

Q. Along those lines?—A. No, sir.

Q. Or along similar lines?—A. No, sir; we had not.

Q. And you referred then, Mr. Jones, did you, only to the understanding which you had at that meeting in May, 1907, and conversations which you had at times subsequent thereto?—A. Yes, sir.

Q. Mr. Jones, after you first saw Clarence Cunningham, at Wallace, and he told you about the coal lands that he had visited in Alaska, how long was it before you again saw him?—A. I don't know. I could not say.

Q. Did you see him after that at any time?—A. Oh, I saw him, yes, at different times, but I could not say when.

Q. At these subsequent meetings with him, did you ever make any agreement with him that under or by the terms of which he was to have any interest in your coal claim when you secured title, or at any time?—A. No, sir.

Q. I call your attention to the fact that in this affidavit that you made, Mr. Jones, you say: "The matter of the formation of a company was never formally discussed." I refer you to the fact that this matter had been discussed at the meeting in May, 1907. I ask you what you meant when you said formally discussed?—A. Well, I meant it had been discussed in a general way, as I said; once in awhile mentioned it when we met on the street or some place else, or happened to come up. My understanding of the affidavit was in that meaning. That is what I mean to convey in saying that.

Q. So the details of the matter have not been worked out?—A. Oh, no; no agreement or anything at all.

Q. And these general conversations you refer to when the question of the discussion of the organization of this company, were all subsequent, were they, to your receiving your final receipt, Mr. Jones?—A. Yes, sir.

Q. Did you ever discuss that matter with these other entrymen, or have any understanding with them prior to getting your final receipt?—A. No, sir; up to the time this discussion came up about the claims, in fact, I paid very little attention to it at all.

Q. What discussion?—A. Why, about being able to get them, or that the Government had made some ruling about them, or something; up to that time I had paid no attention to them hardly before that; in fact, it was never mentioned at all.

Cross-examination by Mr. PUGH:

Q. I don't believe you told us, Mr. Jones, when you first became interested in the Alaska coal fields.—A. The date?

Q. Yes.—A. Well, I am sure I could not state when it was.

Q. Do you know what year it was?—A. Why no, I don't believe I do. I could not say positively. It must have been 1903 and 1904.

Q. 1903. Do you remember making more than one location? In other words, did you make a location first under the general mining laws, and then after that under the subsequent act?—A. There was something like that but that is all very indistinct in my mind also. I don't know how early it was.

Q. Now, it was Clarence Cunningham that first attracted your interest to these coal lands?—A. Yes, sir.

Q. Did he then represent to you, or did you otherwise know or learn, that other persons were going to make coal locations in the same locality through him?—A. Why, I rather think I did.

Q. Did he mention to you any of those persons?—A. Well, if he did, I don't remember it. I don't remember, I am sure, their names.

Q. You do not remember that he named any of them to you at all?—A. No, sir; I can not recall whether he named them or not.

Q. Then you don't know whether—you can not recall whether you were acquainted with any of these persons he was agent for?—A. Yes; I may have been, or I might not have been.

Q. Did Mr. Cunningham, at that time, make any statement to you, or did you have any negotiation with him concerning his compensation?—A. No, sir.

Q. You knew you would be under some obligation to him, did you not?—A. Why, I suppose we would, but I supposed he would look after himself.

Q. You knew it might be a very considerable compensation, I suppose?—A. Well, I didn't really give it a thought, to tell you the truth.

Q. Did Mr. Cunningham then make any representations to you or give you any advice concerning the probable future status of the title to the property that you might acquire by virtue of your location?—A. No, not that I know of.

Q. Nothing was said along that line?—A. No.

Q. Then, we are to understand that you were proposing to make this coal-land location and acquire the title to it without any definite idea how it was to be operated?—A. Well, sir, yes, sir; so far as I was concerned, yes, it was; but I simply took a chance with him; now, that is it, to tell the truth.

Q. Simply to make an investment with him?—A. Yes, that is it, exactly; I made no attempt to investigate.

Q. You had no agreement with Clarence Cunningham concerning the location of a claim under the act of 1903, or the general mining law in 1903, that he was to have a one-eighth of that land which he might locate for you?—A. No, sir; I did not.

Q. Then his right to compensation for the location made in 1904 was the same as it was to any location made in 1903, was it?—A. Yes, as far as I remember. I do not remember any different talk.

Q. There was no other or different or better understanding about that?—A. No, sir.

Q. Did you then know of any rule or custom prevalent among miners in mining regions by which his compensation would be limited or fixed in any way?—A. I didn't just get that.

Q. Did you then know of any rule or custom, or do you know now of any, for that matter, among miners in mining regions by which his compensation should be limited or fixed in any way?—A. No, sir; I did not.

Q. Then you have no means whatever of determining or estimating what would be your liability to Mr. Cunningham, had you?—A. No, sir; no, sir; I had not. In fact I did not know really until I came down here what he was drawing, to tell you the honest truth about it.

Q. Then you have no fixed idea or purpose, so far as it was brought about by agreement of any persons as to what you would do with your property when you acquired title?—A. No, sir; I didn't.

Q. You had been for some time then engaged in business, Mr. Jones?—A. In this business?

Q. In the mercantile business?—A. Oh, yes.

Q. Involving large transactions?—A. Well, not very large, what might be termed large; I do quite a nice business.

Q. It was not your practice, was it, to enter into blind engagements with people you transacted business with as to your liability?—A. I didn't get that.

(Question read.)

A. Not with everyone.

Q. Was it your practice to enter into that sort of an engagement with anyone?—A. Well I did at this time.

Q. I am speaking about your practice?—A. Well, it was not my practice.

Q. Why did you neglect your ordinary precaution in this instance?—

A. Well, from the fact I had known this man for twenty-five years—not twenty-five years up to that time—but I had thorough confidence in him, and it was a matter which was far away from home, and just like any other man will, frequently will, I took a flyer on it.

Q. You assumed he would not charge you any more than his services were worth?—A. Yes, I had that much confidence in him.

Q. Now, you have told us that you were not at that time, as far as you now remember, acquainted with any other persons who had made or were about to make locations of coal lands up there?—A. Well, now, I don't remember whether he mentioned any names or not, I am sure, but since this I do know several of the parties.

Q. Subsequently you became acquainted with them?—A. Yes; well, I did at the time. I knew some of the parties interested, but whether he mentioned them at the time, I don't know. I knew Mr. Campbell and I knew Mr. Finch and Mr. White. Of course, he was not interested in it, or Mr. Jones. I knew them at that time, but whether he mentioned them at that time I am sure I don't know.

Q. You subsequently discovered that you did in fact know some of them?—A. Yes, sir.

Q. Did you have any meetings then with these persons that you knew, or any conference with them?—A. No, sir. In fact I paid very little attention to the proposition at all until after that meeting, I guess in May.

Mr. HUGHES. In May, 1907, you mean. What meeting do you mean?

A. The May meeting. I forget what date that meeting was. That was the first it was talked of at all.

Q. Well, did you have any communication or correspondence with them in relation to the future disposition of this property you might severally acquire?—A. No, not that I remember of.

Q. Then, so far as you were concerned, you want us to understand that you did not have any definite plan or purpose concerning the operation and development of this coal property you were seeking to acquire?—A. I did not.

Q. You were proposing to invest a considerable sum in that property, were you not?—A. Well, I didn't know how much.

Q. You knew it was in a distant and remote region?—A. Oh, yes.

Q. And not very easily accessible?—A. Yes, sir; that is why I paid no attention to it. I just took a chance on Mr. Cunningham. I knew what he was doing; just let it go that way.

Q. You knew that its only value would be for its coal contents and the value could only be realized by the development and proper operation?—A. Yes, sir.

Q. You had no idea then as to when you would effect that development or realize on your investment, or in what manner?—A. No, sir; I did not.

Q. Did Mr. Cunningham from time to time submit to you statements and reports showing the progress of the development work and in what he was expending the money?—A. Yes, I think he did. Yes.

Q. I show you here paper marked Government Exhibit No. 5, Mr. Jones, and ask if you can remember receiving that paper from Mr. Cunningham or a copy of one [handing witness paper].—A. I wouldn't presume that I did, but I could not say positively whether I did or not. I received these things and I did not pay much attention to them. I would just look over them, and what it was, etc., and then I would throw them to one side; and I do not remember them.

Q. Did you notice that in the contents of that paper the development work was referred to always as our development work?—A. No, I did not pay any attention to it.

Q. I will ask you if your attention was in any way invited to the language used in the fifth paragraph on the first page of this paper, "Our development on Trout Creek, where all our work this winter is being concentrated consists of 4 tunnels?"—A. No, sir; I did not pay particular attention to any one or any part of it.

Q. Well, you stated you did not notice any of it?—A. No, sir; I did not.

Q. You did notice that Mr. Cunningham states here about what money he received from various entries being put in a common fund?—A. Well, I did not. I did not know what he was doing with it, to tell the truth.

Q. And you did not know he was spending it for the common benefit of all the claims?—A. Well, I presume that he was, what he got from me I supposed was developing my claim, I supposed, but I didn't know; I really did not pay any attention to that; did not inquire into that at all.

Q. Just for the purpose of showing your knowledge of these papers, I hand you Government Exhibit 6, and I will ask you to state whether you received that paper or a copy of it?—A. I possibly did. I don't remember, though. I could not say.

Mr. GRAY. I think it is only fair if that is one of them he furnished to Mr. Glavis, to call his attention to it.

Mr. PUGH. I don't recall which one it was he did furnish them.

Q. That paper, in the first paragraph, refers to a meeting held at Spokane on June 20, 1905, at which it was decided to send an expert to examine our coal fields in Alaska. Were you present at that meeting?—A. Well, I am not sure. I don't know whether I was or not.

Q. You did not know anything about the employment of an expert?—A. No, I did not. I can remember that there was a party sent up there; there was parties sent up there for that purpose or something, but I didn't really know or remember.

Q. Did you, when you received a copy of this paper, if you did receive one, have your attention directed to this language in the fourth and fifth lines of the second paragraph on page 1:

I am pleased to state that Mr. Hawkins made a most thorough and careful and painstaking examination of the entire field owned by us, as well as a casual examination of the coal lands of the English company adjoining?

A. No, sir; it was not. You asked if my attention was called to that part of it?

Q. I asked if your attention was directed to the use of that language.—A. No, sir; it was not.

Q. And to this language in the ninth and succeeding lines of the same paragraph:

In addition to the above the map will show contours and levels from our land to the ocean with charts and soundings of channels where we are likely to build coal bunkers and wharves, besides giving the approximate route and length of proposed railroad to both the lands owned by the English company and ourselves?

A. No, sir.

Q. You did not notice that language?—A. No, sir. Now, you understand, I possibly received it and read it, but I have not—

Q. I simply asked you for the purpose of directing your attention to it, and also to inquire whether you noticed this language in the second following paragraph on page 2 of this report: "Where those brought to our portion of our ground lying between Trout and Clear creeks?"—A. No, sir; I don't remember.

Q. Then you do not remember of noticing the statement on the last paragraph of page 2:

Mr. Hawkins finds four of our claims of but little value for coal, so far as can be determined at present, but as they contain heavy timber he recommends their being held for that purpose?

A. No, sir; I do not.

Q. (Continuing reading):

And as I have located four other claims taking the dip of the coal measures, no one will be any the loser thereby.

You do not remember that?—A. No, sir.

Q. You don't remember of having had that information; any statement in this paper?—A. No; I did not.

Q. Did you subsequently receive other statements of accounts of the progress of the development work?—A. I presume that I did.

Q. I will ask you whether you received that paper which I now show you, and which has been submitted in evidence as Government Exhibit 9, or a copy of that paper?—A. I presume that I did. I don't recall in particular, but I suppose that I did receive it.

Q. I also ask you to examine the paper which I now hand you, being Government Exhibit 8, and ask you to examine it and state whether you also received that paper or a copy of it.—A. Well, I presume that I did. I don't remember anything in particular about it. I suppose I received all the statements. I don't know.

Q. You have no especial remembrance of these papers or what they contain?—A. No, sir; I don't. I remember looking at them when I got them and throwing them to one side, but that is all I remember about it.

Q. You do not remember of having looked at the first paper I called attention to, showing a keeping of common account and expenditures made for the common benefit of all?—A. No, sir; I do not recall anything particular. Nothing at all.

Q. Then you never addressed any communication to Mr. Cunningham in criticism of the manner in which he was developing the property?—A. You say, did I ever?

Q. Yes.—A. No, sir; I did not.

Q. Referring again to the meeting of June 20, 1905, at which it was decided to employ an expert to examine these properties, did you ever hear who the expert was who was employed?—A. Well, I don't know whether I did at that time, but I heard afterwards it was a man by the name of Hawkins.

Q. Did you ever receive a copy of his report as to the result of his examination?—A. Well, I presume I did; I don't know.

Q. I will hand you a paper which has been submitted in evidence as Government Exhibit 7, and ask you to examine it and state whether or not you received that paper or a copy of it.—A. I presume I did, but I do not recall. No; I do not recall any particular thing in it.

Q. This is the report submitted by Mr. Hawkins, is it?—A. Well, I suppose so.

Q. A copy of it?—A. Yes.

Q. Not remembering that you received a copy—A. I remember hearing in a general way, but whether it was through that copy of his report, I don't know.

Q. Just wait until I finish my question.—A. Yes.

Q. Not remembering that you did receive a copy of this paper, you can not say that you did have your attention invited to its contents?—A. No, sir; I could not.

Q. Nor any part of the contents?—A. No, sir.

Mr. GRAY. Now, if Mr. Jones wants to make an explanation, I think it is proper.

Mr. PUGH. Yes.

A. What I wanted to say is, I probably received all of these statements, but it was usually I just simply read them through and threw them to one side. In a general way I would know I had heard something, and that would be all. And that is why I am indefinite about those things. To say positively I had, I could not. Yet I presume I have.

Q. Your coal-land claim embraces 160 acres nearly, doesn't it?—A. Very near. It is a little short, I think.

Q. Do you know the location of these streams up there that are referred to as Trout and Clear Creek and Canyon Creek?—A. No, sir; I was never on the ground.

Q. You don't know whether your total 160 acres lies on some part or all of these streams or not?—A. No, sir; I do not.

Q. Now, you have stated in your testimony in chief that there was no meeting or conferences of the entrymen for the purpose of considering the joint operation of the properties until that meeting held in Spokane on May 15, 1907?—A. Yes.

Q. You were present at that meeting, I believe?—A. Yes.

Q. And it was then determined that deeds should be made by the several persons present to some person as trustee?—A. Well, I don't just remember what that meeting was; what was done at that meeting.

Q. It does state that some one was to receive deeds to these various claims, doesn't it?—A. Yes, sir.

Q. Who was that person?—A. Why, I don't know as I know his name.

Q. Was it Mr. Wakefield?—A. Wakefield.

Q. C. J. Wakefield?—A. Yes, sir.

Q. In what capacity was Mr. Wakefield to receive the title? For his own use or as trustee?—A. Trustee, is my understanding.

Q. And to what person, if you remember, was he to reconvey? To any other person or persons or corporation?—A. Well, I don't know whether he was or not.

Q. You don't recall what the contents were of the deed you executed?—A. No, sir.

Q. You say you have destroyed that deed?—A. I presume. I have not seen it since I got it from him, and I don't know what I done with it.

Q. Did you preserve any copy?—A. No, sir.

Q. And your recollection of its contents is not clear?—A. No, sir.

Q. Was that deed ever recorded before it was destroyed?—A. Did I put it on record?

Q. Put it on record by anyone?—A. Not to my knowledge; no.

Q. Never was deposited in any place or with any person, any other person than with Mr. Wakefield, as far as you know?—A. No, sir.

Q. Mr. Wakefield never made a reconveyance to a corporation in accordance with the trust?—A. No, sir.

Mr. HUGHES. I am sure that Mr. Pugh would not intentionally lead the witness into any inadvertence, but the testimony in the case shows, and the fact is not disputed, that conveyances were prepared by Mr. Wakefield as attorney and made to the Union Trust Company and not to Mr. Wakefield.

Mr. PUGH. I am not familiar with that fact. I am relying on the witness to remember to whom he conveyed his own property.

The COMMISSIONER. Read the record.

(Record read.)

Mr. GRAY. What was your answer?

A. Well, not to my knowledge.

Q. I believe you have stated that you withdrew that deed and destroyed it because the formation of that corporation was abandoned?—A. Yes, sir.

Q. And the effort to form such a corporation was not successful?—A. I presume not.

Q. Do you know what was the obstacle to success in that effort?—A. No, sir.

Q. You have testified somewhat to or concerning some negotiations that was had with the Guggenheims or their representative. I will ask if the deeds which are referred to in the fourth and fifth paragraphs of that memorandum you previously examined were the same deeds which were authorized at the meeting in Spokane on May 15, 1907?—A. Yes; I think so.

Q. Now, you have on your direct examination in chief testified to the circumstances under which you executed the affidavit which was subscribed and sworn to by you at Wallace, Idaho, on March 5, 1908, before L. R. Glavis, special agent of the General Land Office. I will ask you what time you had to consider that affidavit before you signed it, Mr. Jones?—A. Why, just that morning. He came in the afternoon, he and Mr. Jones, and we talked it over. They asked me a great many questions about the matter and they said in order to expedite matters—there had been some delay in the patent, or something like that—and I spoke to them about the Government being very slow after we had spent our money in developing to get the

patent, and they said that is what it was for, to expedite the matter, and they wanted all the matters pertaining to it that I had. I told them that what I had was probably at home, and they asked me when I could be up in the morning with them, and I told them about 7 o'clock I would be up; and they said that was agreeable, that they was to get out on that train that day, I believe. So, all I could find was a statement of the receipts and expenditures, which I brought up to them the next morning, and they copied it, and while they were doing that—they were in rather of a hurry—and Mr. Glavis asked me if I would sign a statement and I says, "Let me see what it is," and he asked me privilege of my desk, and he came back there, and I gave him a piece of paper, and he wrote out that statement, and I just looked over it and signed it. I didn't just remember what it was until I see it now. It is the first time I have ever seen it since.

Q. It was written out in your store and signed before Mr. Glavis?—
A. Yes, sir.

Q. And he handed it to you for your inspection before you did sign it?—A. Yes; I remember of one. I would not remember the affidavit at all except my signature, but I do the interlining of the draft here, the interlining is there yet, in the little place. I remember it from that.

Q. That affidavit contains no words or uses no expressions or meanings that you did not understand?—A. Yes; there are some things in there that really I could not have said if I had been careful with it. Stating that I knew them people and everybody, while really I did not, you know.

Q. Well, what I mean, there was no words of difficult meaning or technical construction; they are all words of ordinary use and plain meaning?—A. Oh, I presume so. I did not pay very much attention to it, I am sure.

Q. Mr. Glavis made no misrepresentations to you concerning the meanings of your words or expressions, did he?—A. Well, I don't know as he did.

Q. Then, if the affidavit contains anything that you now state is untrue, it is because of your lack of care, is it, in reading it?—A. I would presume so; yes.

Q. You knew it was to be sworn to before an officer authorized to administer oaths?—A. I did not know I was swearing to it. I am sure I don't remember that; but I signed it just the same. My word is as good as my oath.

Q. Did Mr. Glavis state it was his intention to swear you to it?—
A. No, sir.

Q. It was in affidavit form, however, was it not?—A. I see it is there, yes; but I could not recall whether it was or not, I am sure.

Q. The first line says, "Orville D. Jones, being first duly sworn."—
A. Yes; I signed that. There is no question about it.

Q. You did not take any counsel with anyone concerning it?—
A. No, sir; he just went back there, and it was already in a very few minutes. They were all in a hurry, and we just walked back there, and I presume I looked over it clear through. I should have, if I didn't, and I signed it.

Q. Were you alone at the time you read the affidavit, or was Mr. Glavis standing by?—A. I think probably it was back to the desk.

It was on a little desk there, and I think he was standing in there. I am pretty sure.

Q. No greater time elapsed between the time he handed this affidavit to you and the time you executed it than was necessary for you to read it?—A. No; I don't think so.

Q. You stated that when your claim was initiated Mr. Hayes, a partner of yours, was jointly interested with you?—A. Yes; when we first started in.

Q. I believe you testified to something about the time when Mr. Hayes parted with his interest to you. I don't remember it. What did you say?—A. Well, it was just—it was after—I could not recall the date. I know before we could apply Mr. Cunningham said there was a law passed that forbid anyone there from going in connection with anyone, so I just bought him out. In fact we were not in very much time. I didn't think much of it.

Q. The law under which your second location was made was passed in the year 1904. Do you remember whether it was in the year 1904—in that year, or 1905, or 1906?—A. No; I could not tell what year it was really.

Mr. PUGH. That is all.

Redirect examination by Mr. GRAY:

Q. Referring to the time the power of attorney and the affidavit which I showed you before were executed, are in the application papers and dated the 14th of October, 1904, will you say with reference to them when it was that you took over Mr. Hayes's interest? When was it with reference to the time you acknowledged that power of attorney and that affidavit that you took over Mr. Hayes's interest?—A. It was before that.

Q. You mean you took it over before that?—A. Yes.

Q. After you first went in there and paid Mr. Cunningham the \$500, how did you pay him money?—A. Why, I don't know whether it was cash or check or how.

Q. To refresh your memory, as a matter of fact, didn't he draw on you for money from time to time as he needed it?—A. Why, yes.

Q. I don't refer to the first payment.—A. Sight draft, which usually came to our bank there, which we done business with there, and from Seattle.

Q. Your bank where?—A. The First National Bank at Wallace.

Q. And you met all of these drafts as they came, did you, from Mr. Cunningham during all these years?—A. Yes, sir.

Q. And left it entirely to Mr. Cunningham as to the method of expenditures and the distribution of these funds?—A. Yes. Never questioned them at all.

Q. You said that since you came down here you learned that Mr. Cunningham was getting some compensation, Mr. Jones?—A. Well, that is the first I really knew of anything definite that he was. I never asked any questions about it.

Q. You assumed, I suppose, he was taking out for his own expenses from the moneys which you were contributing to him by these drafts?—A. Yes.

Recross-examination by Mr. PUGH:

Q. Just one further question. I want to ask you if at the time Mr. Glavis took your affidavit he was accompanied by another special

agent or person?—A. Why, I don't know. Mr. Jones was the only party with him. I don't know whether he was a special or not.

Q. They visited your store for the first time on the day they took your affidavit, or were they there the day before?—A. No; the next morning they took the affidavit. It was in the afternoon, and I wanted to look up any data or any correspondence I had or anything, but they were at home, and they said in the morning would do, if I would bring them up in the morning, and then after that I gave them the affidavit.

Q. The discussion as to what you were to state about it in your affidavit took place the day before, did it?—A. Well, in a general way, we talked over the events, etc., leading up to it, and he asked me the next morning if I would give him a statement covering those things, if I remember, and then he went back to my desk and wrote it out.

Q. Assuming to write out what you had told him in your conversation?—A. Yes; covering the ground.

By Mr. GRAY:

Q. Did they tell you when they first came in in the afternoon, that they were going to take an affidavit from you, Mr. Jones?—A. No, sir; I do not think they did.

(Thereupon a recess was taken until 2 o'clock p. m.)

DECEMBER 6, 1909—2 P. M.

INQUIRY RESUMED.

Appearances: Mr. William J. McGee, United States special commissioner; Mr. James M. Sheridan and Mr. William B. Pugh, counsel for the Government; Mr. E. C. Hughes and Mr. John Gray, counsel for the claimants.

ALFRED PAGE, called as a witness on behalf of the claimants, being first duly sworn by the commissioner, testified as follows:

Direct examination by Mr. GRAY:

Q. State your name, your residence, and your occupation.—A. Alfred Page; Wardner, Idaho; various occupations; mining, lumber business, and farm lands.

Q. How long have you resided in Idaho, and where, Mr. Page?—A. About twenty-five years.

Q. Where?—A. I was in Murray a year, and twenty-four years in Wardner.

Q. That is all in the Coeur d'Alene district, is it?—A. Yes.

Q. Are you acquainted with Clarence Cunningham?—A. Yes, sir.

Q. How long have you known Mr. Cunningham?—A. All that time; twenty-five years.

Q. Mr. Page, when did you first become interested in securing a coal claim in Alaska?—A. I believe it was in 1903. I can not tell the month. Maybe March—I believe it was in May.

Q. What were the circumstances under which you became interested in securing a coal claim there?—A. Well, he told me—

Q. Who?—A. Clarence Cunningham told me that he had been up to Alaska, and he had seen some coal showings up there and he had or was going to locate some claims for some different parties, naming

some of the names, and asked me if I would go in, and I asked him what he was going to get out of it, if he had a claim, and he said "Yes;" and I told him all right, I would go in.

Q. Did he say how much it was going to cost you?—A. No; he did not. I don't suppose he knew at that time.

Q. Did he say it would require any money?—A. At that time I believe I put up \$750.

Q. Was there anything further said at that time?—A. No; I don't think there was.

Q. Did you make any arrangements or agreement or contract or have any understanding with him other than what you have testified to?—A. No, sir.

Q. And he was, you say, to locate you a claim?—A. Yes.

Q. When did you next see him, Mr. Page, if you know?—A. Oh, I can not tell when I saw him the next time. I have seen him several times since, but I can't tell the dates.

Q. Did you ever pay him any further sums of money than that \$750?—A. Yes, sir.

Q. How did you pay those; in what manner?—A. Why, he would usually draw on me, and I would send it through the bank.

Q. You say he usually drew on you? Now, in what other way, if at all, did you ever pay him?—A. Why, I believe that was the only way. I am not sure whether I gave him one check or not after that. I can not tell for sure.

Q. Did you ever give Cunningham a power of attorney authorizing him to locate a coal claim for you in Alaska?—A. Yes, sir.

Q. I hand you power of attorney acknowledged on the 19th of October, 1904, before C. H. Wentz, a notary public, from the files in coal-land entry No. 21. I ask you if you executed that power of attorney?—A. I did. That is my signature.

Q. I call your attention to an affidavit which is attached thereto, sworn to on the 19th day of October, 1904, before the same notary public [witness examines paper].—A. Yes, sir; that is my signature.

Q. You swore to that affidavit, did you?—A. I did.

Q. I call your attention to the following language contained therein, Mr. Page:

Swear that the actual possession of said coal lands through my agent and attorney in fact, and make entry for my own use and benefit, and not directly or indirectly for the use or benefit of any other party.

Was that true at the time you swore to it?—A. That is correct.

Q. Had you, at that time, any contract or agreement or any understanding with Mr. Cunningham or any other person by which the title to your coal claim or any interest therein should inure to the benefit of such other person?—A. I did not.

Q. Did you have any contract or agreement or any understanding when you got title to it that you would turn it over to a corporation, either formed or to be formed?—A. No, sir.

Q. Did you have any understanding with anyone, or were you under any promise or obligation to join it or consolidate it with any other coal lands or coal claims for the purpose of working or mining?—A. I was not.

Q. I call your attention to an application for patent which was sworn to by you before Albert H. Featherstone, on the 23d of February,

1906, and ask you if you executed that instrument?—A. Yes, sir. This is my signature.

Q. I call your attention to the following language contained therein:

Through him I make entry for my own use and benefit, and not directly or indirectly for the use and benefit of any other party.

Was that true at the time you made it?—A. That was correct.

Q. Had you at that time any contract or agreement or understanding whereby any interest in your coal claim should, upon your acquiring title, or at any time in the future, inure to the benefit of any person, association, or corporation, other than yourself?—A. I had not.

Q. Or had you any agreement or understanding, or were you under any promise or obligation to convey it to a corporation or to turn it over to an association?—A. No.

Q. Or any contract or agreement or understanding or promise or obligation to combine it with any other claim for the purpose of mining?—A. No, sir.

Q. I call your attention to an affidavit here, described as the Love affidavit, sworn to on the 19th of December, 1906, before Roy H. Kingsbury, a notary public, and ask you if you executed that instrument?—A. I did.

Q. Were the statements contained in that true, at the time you made them?—A. Yes, sir.

Q. I call your attention to the following language:

That said location was made for the sole use and benefit of affiant and has ever since so remained and is in his exclusive control; that at no time prior to location or any time prior or since has affiant entered into any agreement, express or implied, or pledged himself by promise or otherwise, express or implied, by which title to any land, or any part thereof, or interest therein is to pass to any person or association whatsoever.

A. That is correct.

Q. (Continuing:)

That in event said claim goes to entry in the United States land office at Juneau, Alaska, and receiver's receipt for the purchase price issues, he will not be under any contract, obligation, or promise to sell or convey said tract to any person, persons, or association or to put the same into any company or joint holding for any purpose, or to otherwise dispose of the same, but will be free in every way to hold said tract, to lease or sell it at any future time.

Was that true?—A. That is true; yes, sir.

Q. (Continuing:)

That he does not know any person or persons or association that intend or contemplate the leasing or the purchase of said tract.

Was that true?—A. That is correct; yes, sir.

Q. Had you any contract or understanding, express or implied, or were you under any obligation or promise, express or implied, which was inconsistent with the statement made in that affidavit?—A. I was not.

Q. Mr. Page, you paid the Government for your land?—A. I did; yes.

Q. How did you pay them, if you recall?—A. Why, if I remember right, I sent it through the First National Bank of Wallace; sent my personal check, and I think Mr. Johnson sent it to them.

Q. Was that the bank that you were and have been doing business with?—A. Yes, sir.

Q. I hand you herewith the final certificate of purchase, dated April 11, 1907, and ask you if you received that; it is from the files in the case.—A. Yes.

Q. You received a copy of that issued on that date?—A. Yes.

Q. You had sent your money prior to that time, had you?—A. Yes, sir.

Q. To whom was it sent?—A. To whom was it sent?

Q. Yes.—A. Well, I suppose it was sent to the receiver up there. I am not sure now.

Q. You say it was attended to—A. By the First National Bank of—

Q. Of Wallace?—A. Yes.

Q. How much money did you send, Mr. Page?—A. I think it was \$1,600.

Q. In the certificate of entry I see the price is \$1,587.62; did you receive—A. What was the amount?

Q. \$1,587.62.—A. Well, I believe he sent me back a check for \$12 or something like that. It was 158 acres, I believe, about; some kind.

Q. You saw Mr. Cunningham, did you, between the date when you first authorized him to locate a coal claim for you in Alaska and the date of your final purchase?—A. Yes; I think I did.

Q. Where did you see him?—A. Well, I seen him in Spokane or Wallace, one of those two places.

Q. At any time that you saw him between these two dates, did you make any contract with him or enter into any agreement with him?—A. No, sir.

Q. Of any kind?—A. Not any.

Q. In relation to this matter I refer to, you say that subsequent to your putting up the first amount of \$750 Mr. Cunningham drew on you for various amounts, which drafts you paid?—A. Yes, sir.

Q. Did you know in what manner that money was spent?—A. Why, I expected he spent it on my claim; general expenses; cutting trails, building cabins, etc., in a general way on the frontier.

Q. Did you know what, if anything, Mr. Cunningham was to receive?—A. I did not. I expected he would take out his expenses.

Q. I call your attention, Mr. Page, to the minutes of a meeting, Claimants' Exhibit No. 3, a meeting of the owners of coal claims held May 15, 1907. You were present at that meeting?—A. I was.

Q. I wish you would examine that exhibit and state whether or not that is a correct record, as nearly as you remember of what transpired at that time.—A. Yes, this was about the scope of it.

Q. I call your attention to this statement therein: "Thereupon, on motion of Mr. Sweeney, seconded by Mr. Finch, the chairman was authorized to appoint a committee of five who should organize a corporation for the purpose of acquiring the coal claims owned by those present, and those of such other claim owners as might desire to join the corporation; the committee to secure deeds to the mining claims and to issue receipt therefor, and take all necessary steps to complete the organization of the company, ready for the transaction of business." Is that in accord with your memory as what occurred at that time?—A. Yes, sir.

Q. Prior to this meeting, on the 15th of May, 1907, had you ever had any understanding or agreement or contract of any kind, express or implied, by which you had agreed to organize a company with other claim owners, and deed your claim to them?—A. None whatever.

Q. Or to unite it with any other claims or any other property for the purpose of jointly working or jointly mining it?—A. No, sir.

Q. I hand you Claimants' Exhibit No. 4, the minutes of a meeting held on July 16, 1907, in the city of Spokane. You were present at that meeting, were you?—A. I was.

Q. In your own way, I wish you would state what occurred as you remember it. A committee was appointed to go to Salt Lake at that meeting, was it, Mr. Page?—A. Yes.

Q. To confer with some representative of the Guggenheim interests?—A. Well, Mr. Cunningham he stated that Mr. Eccles, I believe it was, or some of those parties were to make some kind of a proposition in regard to the coal, and the committee was appointed to go down and see what that proposition was.

Q. State what the facts are, as to whether or not at that meeting, or at any time, you agreed to be bound by any action which that committee took?—A. No, sir.

Q. Did you at that meeting agree to ratify any action which was taken by the committee at Salt Lake?—A. No, sir.

Q. State what your understanding was as to whether or not that committee was authorized to enter into a contract which would be binding upon you, in reference to your coal claim.—A. They was not authorized to draw up any contract, without it was submitted to us afterwards. That is the way I understood it.

Q. Subsequent to that time did you receive or see a copy of a memorandum which was prepared at Salt Lake when that committee was there?—A. I believe I did.

Q. I hand you Government Exhibit 10, which I think is a correct copy. Did you, subsequent to that time, see that paper, Mr. Page? Or one substantially similar to it?—A. Yes; I believe I did. I read over a good many points of it.

Q. And state what the facts are as to whether or not you ever agreed to that proposition.—A. No, sir; I did not. I thought it was too much one-sided.

Q. What do you mean by that?—A. Well, I didn't think that we could produce the coal for \$1.75 a ton, and also the \$200,000 was not sufficient to put up to develop those mines, and I was leery that we would get connected with the Guggenheims and that they would eventually take our claims. I didn't see any other way about it. I spoke to Mr. Berbidge about it, and he thought the same way.

Q. Subsequent to the meeting in May, did you prepare a deed for your claim pursuant to the action taken at that meeting?—A. I did.

Q. What did you do with it?—A. I forwarded it to Mr. Wakefield.

Q. Did you ever get that deed back?—A. Yes, sir.

Q. What did you do with it?—A. Destroyed it.

Q. Did you at any time, ever agree to this proposition contained in Government Exhibit No. 10?—A. Is that the Guggenheim?

Q. That is the Guggenheim arrangement.—A. No, I never did.

Mr. GRAY. That is all.

Cross-examination by Mr. PUGH:

Q. You say you were first interested in the Alaska coal lands through Mr. Cunningham—Mr. Clarence Cunningham?—A. Yes, sir.

Q. That was in what year?—A. I believe it was in 1903.

Q. 1903. He was authorized and employed to make a location for you at that time, was he?—A. Yes, sir.

Q. What kind of a location was that to be; under what law, Mr. Page, if you know?—A. Well, I don't know. I did not go into details about the law. I considered that he understood that part of it.

Q. You did not make any inquiry as to the authority of what law he was proceeding under?—A. I did not.

Q. Subsequently you made another location; a new location?—A. Well, I believe he did; I am not sure about that.

Q. Now, at the time you made that first location, did Mr. Cunningham intimate to you that he would expect any compensation for his services?—A. No; he did not. I expected I would have to pay my pro rata of his expenses.

Q. But you did not have any definite understanding as to whether he would receive any compensation or what it would be?—A. No, sir.

Q. Did you know then of any rule or custom prevalent in mining districts or among miners that would fix his compensation or limit him in any way?—A. Well, yes; I did. I have a number of prospectors out. I have several out now, but I never had any contracts with them. I just leave it to them.

Q. And determine afterwards what the services are worth, do you?—A. No. Sometimes they take an interest in what they locate and sometimes I pay lots of them a salary. What we call grubstake them.

Q. But you want us to understand in this particular instance you had no agreement or understanding or intimation of any kind?—A. No agreement at all.

Q. As to what he would expect or what you would pay him?—A. I thought it was a pretty clean gamble. I had known him a long time, and I didn't give it a thought.

Q. It was a blind engagement as far as his compensation was concerned?—A. Yes, sir.

Q. You have been engaged in business for some time, I suppose, Mr. Page?—A. Yes, sir.

Q. Some large transactions?—A. Yes, sir.

Q. It is not your practice to enter into that sort of an engagement, is it?—A. It is with prospectors.

Q. Undetermined liability?—A. Not with any large sales or anything of that kind. Of course, we have to have something to show for it, but prospectors—we give them pay in advance and trust to their honesty. That is the way this western country is developed.

Q. Now, at the time Mr. Cunningham spoke to you in the first instance about the location of Alaska coal lands, did he represent to you that any other persons known to you were to make locations in the same or immediate locality?—A. He did.

Q. And did he name them to you?—A. He named a few of them.

Q. They resided there in Wallace, did they?—A. Well, there was one at Moscow, Mr. Jenkins; some in Wallace and some in Spokane.

Q. Did he tell you anything about the terms and conditions which he represented to them?—A. No, sir; it was never brought up at all.

Q. Did he state to you or did you otherwise learn or know that Mr. Cunningham was to represent those persons in the making of those locations?—A. Yes; certainly I knew.

Q. He was the attorney in fact?—A. Yes.

Q. Just as he was going to represent you?—A. Exactly.

Q. Did you subsequently meet these persons and have any conference with them concerning the disposition that was to be made of your coal-land claims and theirs; I mean before you got your final receipt at any time?—A. No, sir; never.

Q. You never had any meeting or conference with them whatever?—A. No, sir.

Q. Did Mr. Cunningham in any way represent to you or advise you what was to be the probable future disposition of the title to these properties?—A. No, sir; I don't think he did.

Q. You don't think he did? Do you remember about that? Just what he did say?—A. No; he never did. Not in regard to that.

Q. Now, when you made the second location, under the law of 1904, did you have any agreement or understanding with Mr. Cunningham at that time with respect to that location and concerning his compensation?—A. I did not.

Q. Whatever understanding you had about the former location under the general mining laws, continued and existed with respect to this second location, did it?—A. Yes, sir.

Q. You had no other or different or more definite understanding about what his title and compensation would be?—A. No, sir.

Q. You knew, of course, that Mr. Cunningham's claim to compensation might be very considerable?—A. Yes; I knew—I had known him for so long, and knew he was pretty honest and he was looking after other people's interests as well as my own, and I didn't think he would act anything unreasonable at all.

Q. You were simply going to trust to his?—A. Exactly.

Q. Integrity in the matter?—A. Yes.

Q. But you had no means whatever of determining how much your liability to him might be?—A. No; I had not.

Q. Except as you might agree on it afterwards?—A. Yes.

Q. You stated you did not have any meetings or conference with any of these other persons whom Mr. Cunningham was representing, prior to the date of your final receipt, concerning the future operation of them?—A. No, sir.

Q. Did you have any communication with them of any kind by way of correspondence or otherwise?—A. No, sir.

Mr. GRAY. You refer in reference to these matters, Mr. Pugh?

Mr. PUGH. Yes; I should have said that. In reference to the same.

Q. Then, as far as you were concerned, you had no definite plan or purpose concerning the future development of that property in combination with anybody else?—A. I did not.

Q. You were proposing and expecting to make very considerable investments there in the development of that property, I suppose?—A. Well, I expected to some time.

Q. You knew it would require that, didn't you?—A. Considerable money; yes.

Q. You knew, also, that these lands were in a distant and remote region?—A. Yes, sir.

Q. Somewhat inaccessible?—A. Yes, sir.

Q. No means of transportation?—A. Well, that was to be found out afterwards.

Q. You knew that their sole value depended upon their coal contents, and upon developments, and marketing of that coal, did you not?—A. Exactly.

Q. Yet you proposed to purchase the title without any plan or purpose concerning that development and the realization of that value?—A. Let us hear that question again.

(Question read.)

A. I did.

Q. Did Mr. Cunningham, from time to time, submit to you statements and reports showing the progress of development work and the expenditures of money by him?—A. I think I did have two or three of the reports sent to me.

Q. I am going to show you now, Mr. Page, a paper which is in evidence as Government Exhibit No. 5, and ask you to state, after examining it, whether you ever received that paper, or a copy of it [witness examines paper].—A. I guess I must have seen it. Yes; I believe I did. I think I received a copy; something like it.

Q. And that purports to be a report concerning the extent of development work then accomplished?—A. Yes, sir.

Q. And the accounts on which expenditures had been made?—A. Yes.

Q. I will ask you if at the time you received that your attention was in any way invited to this language employed in the fifth paragraph on page 1 of that paper:

Our development on Trout Creek, where all our work this winter is being concentrated, consists of four tunnels, being respectively 50 feet, 170 feet, 145 feet, and 180 feet.

Did you notice that language at that time?—A. Very likely I did. I didn't take particular notice of it.

Q. Also to this language in the next succeeding paragraph:

On Clear Creek we have about 200 feet of tunnels, with innumerable open cuts, and on Carbon Creek we have also done quite an amount of surface work.

A. Well, I did not particularly notice that language, but I guess it was the report and don't suppose he would be writing to each one individually. That is where the "we" comes in and the "our."

Q. I also request your attention to the language of the eighth paragraph, which I will now read to you:

We are working about seven men, which probably will gradually become increased as it becomes necessary to scatter them along the length of the claims in order to prevent others from encroaching upon our lands, this being the only way we can protect our interests until surveys are established and entries made.

Did you have your attention directed to that language?—A. No, sir; I never noticed that language.

Q. You never in any way complained or criticised the use of his form of expression, did you, from Mr. Cunningham?—A. No; I did not.

Q. I have here another paper dated October 20, 1905, which has been introduced in evidence as Government Exhibit No. 6, and I am going to show you that and ask you to state whether you ever received

that paper or a copy of it.—A. Yes; I believe I received this report.

Q. Did you read it at that time and consider it?—A. Why, I guess I glanced over it. I did not go into detail very minutely at all.

Q. I will ask you if you attended that meeting held June 20, presumably 1905, at Spokane, Wash., at which it was decided to employ the expert here referred to, Mr. H. L. Hawkins?—A. No; I don't think I did.

Q. Did you know anything about that meeting?—A. No, sir.

Q. At the time you received this paper, I am going to ask you if you noticed and considered this expression, occurring in the second paragraph on page 1:

We went on the ground on August 1, and returned to Seattle October 15. I am pleased to state that Mr. Hawkins made a most full and careful and painstaking examination of the entire field owned by us as well as a cursory examination of the coal lands of the English company adjoining.

A. I did not take particular notice of it.

Q. To this language in the same paragraph:

In addition to the above his map will show contours and levels from our lands to the ocean and with charts and soundings of the channels where we are likely to build bunkers and wharves, besides giving approximate route and lengths of proposed railroad to both the lands owned by the English company and ourselves.

Did you notice that language?—A. No; I didn't take any particular notice of it.

Q. I wish also to call your attention to this language occurring in the second full paragraph on page 2 of the same paper:

Where those brought to that portion of our ground lying between Trout and Clear creeks where the measures are unbroken, and developed sufficient to show approximately 100,000,000 long tons above the tunnel level, etc.

Did you notice that language?—A. Well, I noticed particularly the 100,000,000. I thought it was a pretty good thing.

Q. Did you think it was all on your claim? [Laughter.]—A. Well, I hadn't taken that into consideration.

Q. You knew you only had 160 acres of land up there, didn't you?—A. Yes, sir.

Q. Did you know what was the relative locations of Trout and Clear and Canyon creeks?—A. No, sir.

Q. You didn't know whether your 160 acres lay some portion of it on all of these creeks or not, did you?—A. I did not.

Q. I also wish to read to you the last paragraph of page 2 of this report:

Mr. Hawkins finds four of our claims of but little value for coal, as far as can be determined at present, but as they contain heavy timber, he recommends their being held for that purpose; and as I have located four other claims, taking a dip of all the coal measures, no one will be the loser thereby.

Did you read that?—A. I guess I must have read it.

Q. Did you understand it?—A. I didn't take any particular notice of it, at that time.

Q. You did not, then, stop to ponder what he meant by "four of our claims," when you only had one, did you?—A. No; I did not.

Q. Nor did you understand who would hold those four claims for the timber, did you?—A. No.

Q. Who "we" were?—A. No.

Q. Your attention was not drawn to or you at least did not pause to consider any other similar statements and expressions appearing in that paper then?—A. No, sir.

Q. Indicating the manner in which Mr. Cunningham was recording these titles?—A. No.

Q. Prospective titles?—A. No.

Q. I am now going to ask you to examine two other papers, being Government Exhibits 8 and 9, and ask you if you at any time received any one of those papers, or both of them or copies of them. These are copies themselves, I believe.—A. Very likely I received them; I think I did.

Q. If you did receive them did you give them any more careful consideration than you did these other papers to which your attention has been called?—A. No, I casually looked over them and then pigeonholed them.

Q. These reports all indicated to you, did they not, Mr. Page, that Mr. Cunningham was keeping one common account for all the moneys he received from all of the entrymen?—A. Well, I don't know how he did keep the accounts; but I guess that is the way he kept the accounts.

Q. He was expending moneys from that fund for the common use and benefit of all of the claimants.—A. Exactly.

Q. Now, was you at any time subsequent to the delivery to you of the receiver's final receipt present at a meeting of the various claimants, or some of them, held for the purpose of considering the propriety of making some representation or proposal to the Guggenheims?—A. Before the receipt of the receiver's receipt?

Q. After.—A. Yes; I was in July, I think it was.

Q. I will ask you to examine this paper which I now hand you, being Government Exhibit 10, and ask you whether or not you ever received a copy of that paper or saw one of them?—A. Yes, I saw one of them.

Q. I believe you have testified on examination in chief that you did execute a deed in accordance with the understanding referred to in this memorandum. I will read it. In the sixth paragraph:

At said meeting a resolution was unanimously passed authorizing—

No, that is not the one. It is in the fifth paragraph. Quoting as follows:

Conveyances by some of said entrymen to said trust company have been executed and delivered, and it is contemplated that all will execute similar conveyances within a short time.

You were one of the persons who executed the deeds there referred to, weren't you?—A. Yes, sir.

Q. You stated, did you, that you subsequently withdrew and destroyed that deed?—A. I did.

Q. You preserved no copy?—A. I did not.

Q. Who was the trustee named in that deed, or was it made to a trustee?—A. I think it was the Union Trust Company, if I remember right.

Q. Of Spokane?—A. Spokane, yes.

Q. Did the Union Trust Company ever come into the possession of the deed in any way?—A. No, not to my knowledge.

Q. Who held it?—A. Mr. Wakefield; that is, I believe he did. I sent it to him and he returned it to me.

Q. You subsequently received it back from Mr. Wakefield, did you?—A. I did; yes, sir.

Q. It never had been delivered to the trustee, and consequently was never recorded and no estate passed under it?—A. Yes, sir.

Q. Now, what was the trust to which the Union Trust Company was to take that title—were they— A. I don't know. They didn't go into any details and I don't know whether it was the Union Trust Company or not. It was brought up in the meeting and I turned my deed over with some of the rest of them.

Q. So far as you know, did they take it for themselves, for their own use and benefit, or in trust for some corporation then formed or to be formed?—A. Well, I suppose it was in trust for the claim owners.

Q. For who?—A. For the claim owners, I believe.

Q. You don't remember the terms of the deed?—A. No, I do not.

Q. I have here one other paper concerning which I have not questioned you. It is a report made concerning the examination of this property for the coal-land claims in Alaska by H. L. Hawkins; it is in evidence as Government Exhibit No. 7. I will ask you to examine that and state whether you ever saw that paper before, or a copy of it?—A. No, I don't think I got one of those reports at all. I don't think I ever received one of those.

Q. You don't think you ever received one?—A. No.

Q. Did you ever see one in any other person's possession?—A. No, I did not. I have noticed them in the court room, but I don't think Mr. Cunningham ever forwarded me one of them. I was telling him this; me, he slighted me on that. I never got his report.

Q. Was you present at a meeting of entrymen in these Alaska coal entries held in Spokane on July 16, 1907, in the office of Finch & Campbell?—A. Yes, sir.

Q. At that meeting it was determined by the entrymen present to execute a deed to which you have referred to in your testimony previously, was it not?—A. Yes, sir.

Q. And in accordance with that determination that deed that you executed was so executed and delivered?—A. Yes, sir.

Q. To Mr. Wakefield?—A. Yes, sir.

Q. What is the usual compensation or rate of a locator or prospector locating a claim for another person, Mr. Page?—A. Well, it is according—

Mr. GRAY. What kind of a claim? I object unless it is shown.

Mr. PUGH. Mining claim.

A. Give me that question again.

(Question read.)

A. Sometimes we give them a stated salary. Other times we grubstake them and they hold an interest for themselves, or again, they will locate a claim for their sole use.

Q. Is that interest which they would hold for themselves, in the absence of an agreement or salary, a fixed interest; what part of the claim would that interest be?—A. Well, if I sent out prospectors—we usually send them out and they will have one-fourth of the claim by grubstaking them. That would be a one-fourth undivided interest.

Q. A one-fourth undivided interest of a claim in the absence of any other agreement for compensation?

Mr. HUGHES. Just wait a minute; he didn't say that.

Mr. SHERIDAN. Read the answer.

(Answer read.)

Mr. SHERIDAN. Read the question.

(Question read.)

A. I don't exactly understand the question now.

Q. You have told us that sometimes they would be paid a salary and other times when grubstaked, they would retain a one-fourth interest in a claim?—A. If we made that agreement, yes.

Q. Do you have to make any agreement; to that in the absence of an agreement what would it be?—A. Why, they usually hold an interest in the claims. We usually make an agreement with them when they go out.

Q. You usually fix their interest?—A. Yes.

Mr. PUGH. I think that is all.

Mr. SHERIDAN. Isn't it true, as a matter of fact, Mr. Page, that the practice and rule amongst miners is that when nothing is said about what interest they shall have before they are grubstaked, that they do get a definite fixed interest?

A. No, not usually. It is usually talked over before they go prospecting, and they decide on what interest they are going to have.

Mr. SHERIDAN. That is all.

Redirect examination by Mr. GRAY:

Q. You say that you have sent out a good many prospectors to locate claims?—A. Yes, sir.

Q. Mr. Page, you became the owner of an undivided interest in the Page group of mining claims in the Yreka mining district, didn't you, under a grubstake agreement of some such kind, with A. J. Devlin?—A. I did; yes, sir.

Q. In that case you got an undivided one-half interest, didn't you?—A. Yes, sir.

Mr. PUGH. I think, Mr. Gray, you are doing the testifying.

Q. What became of those claims after you and Mr. Devlin had located them?—A. We made some development of them, and then sold them to a company.

Q. How much did you get for them?—A. Well, I don't know as I ought to tell.

Mr. SHERIDAN. I object to that as immaterial.

Q. You received a considerable sum of money, did you?—A. Several hundred thousand dollars.

Q. Did you and Mr. Devlin have any agreement in writing at the time he went out to prospect for you?—A. No, sir.

Q. Mr. Page, in the cases which you have been speaking of, where you have sent prospectors out, and they got a one-fourth interest, it was where that was agreed upon, was it?—A. Yes, sir.

Q. And in this case after executing the power of attorney which you did, and making the affidavit which you did, that it was for your own exclusive use and benefit, state what your understanding was as to whether Mr. Cunningham was to receive any interest in your claim?—A. No, sir.

Q. What was your understanding as to his receiving any interest?—A. Well, we had no understanding then whatever.

Q. State whether or not you understood he was to receive any part of that as compensation for his locating your claim.—A. No, sir. He had a claim of his own. Then I would have to put up my pro rata of the expenses.

Q. As you afterwards learned, after this first conversation some time afterwards, did you, or did you not, learn that he was receiving money for expenses and salary account?—A. Yes; I—I don't know. I did not know. I don't know yet what his salary amounted to.

Q. Now, Mr. Pugh called your attention to some document that Mr. Cunningham sent out, a circular, in which he spoke of some place where you were likely to build—let me get the language—"in addition to the above his map will show contours and levels from our lands to the ocean, with charts and soundings of the channel where we are likely to build coal bunkers and wharves." That is in the letter which is dated October 20, 1905. Had you ever discussed with anyone prior to that time the building of bunkers and wharves—I refer to Government Exhibit No. 6? Had you ever discussed with anyone at or prior to that time the building of wharves or bunkers?—A. No, sir.

Q. What consideration had you given, prior to that time, to the building of any bunkers or wharves or railroad, Mr. Page?—A. I had not given it any consideration at all.

Q. Had you ever talked with anybody about where you were going to build any bunkers in Alaska, or wharves?—A. No, sir.

Q. Do you know anything about such a matter?—A. I do not.

Q. You said in answer to a question of Mr. Pugh's you had never had a meeting or conference whatever with any of the other owners, Mr. Page, prior to getting your final receipt. What do you mean by that?—A. I had never talked anything over regarding the claim with any of them.

Q. You do not mean to say that you had not met various men?—A. Yes; certainly I had.

Q. Men who had claims in that district?—A. Yes; I had met several of them. Run against them right along.

Q. Mr. Pugh has asked you if you made that investment, paid the Government that money without knowing how you were going to develop that claim, Mr. Page. I will ask you whether or not, if there was coal there, you were financially able to develop any coal claim you had in Alaska?—A. Yes, sir.

Q. Now, Mr. Pugh has also called your attention to some statement of Mr. Cunningham's to the effect that he was going to hold four claims because they had timber on them. Do you know anything about that?—A. No, I don't; only what I see there, and I never took much notice of it.

Q. Did you understand from him, ever at any time, that you had any interest in any claims that had timber on them?—A. No, sir.

Q. Or that were being held for any such purpose?—A. No, sir.

Q. Did you ever consent to the location of any claim in Alaska as a coal claim in which you were to have any interest because of timber being upon it?—A. No; never did.

Q. State whether you ever authorized Mr. Cunningham to locate any claim for you, except a coal claim, which you authorized him to locate by the power of attorney which you executed.—A. That is all.

Q. You understood, Mr. Page, did you, that the certain developments up there—there was certain general developments which were being carried on by Mr. Cunningham up there?—A. Yes, sir.

Q. Did you know for what purpose that was being done. If so, state what it was.—A. It was to develop to see if the values was there, I suppose.

Q. What do you mean by that?—A. See if there was good coal showings there, to warrant holding the claim.

Q. Now, Mr. Page, there is one question I want to ask you with reference to Government Exhibit 10, the proposed Guggenheim agreement. Referring to the paragraphs in this Government Exhibit 10, to which Mr. Pugh called your attention, and particularly to that part of it which refers to the conveyance by some of said entrymen to said trust company having been executed and delivered—and it is contemplated that all will execute similar conveyances in a short time—just state whether or not you ever executed the deed to which you refer in contemplation of that property being transferred to the Guggenheim Exploration Company or any of the Guggenheims under the terms of such memorandum as Government Exhibit 10.—A. No, sir; I did not.

Q. Mr. Page, did you have any agreement or understanding with Clarence Cunningham, express or implied, under or by the terms of which he was to have an interest in your claim as compensation of his—a part compensation of his services in locating you?—A. I never did.

Recross-examination by Mr. SHERIDAN:

Q. Just a minute, Mr. Page. I call your attention to the power of attorney executed by you on the 19th day of October, 1904, and which is a part of the original entry papers now in evidence under stipulation of counsel. I will ask you to state how that power of attorney came into your possession and when.—A. Well, that I could not tell you. I have forgotten. I suppose it was sent to me to sign.

Q. Sent by whom?—A. That I could not tell. I could not answer that positively.

Q. Do you recall whether Mr. Clarence Cunningham said this power of attorney to you?—A. He probably did, but I could not say for sure.

Q. From the time you became interested in your coal claim in Alaska down to and including the time of final receipt did you ever consult counsel in connection with this matter?—A. No, sir; I did not.

Q. Did I understand you to say, at the time you testified concerning what compensation Clarence Cunningham was to have for such services as he rendered to you in this connection, that Mr. Cunningham had a claim of his own, and you supposed that would be his compensation?—A. No, sir; I did not exactly say that.

Q. What did you say in that connection?—A. I said he located a claim for himself and what I would pay him for locating my claim I would have to pay up my pro ratio of the expenses.

Q. Now, about how many of these entrymen did you know at the time you located this claim?—A. Several. I don't know how many. I did not know them all.

Q. Name them, as near as you can, all that you knew.—A. I knew Mr. Jenkins, Mr. Finch, and Mr. Campbell, Mr. R. K. Neill, and a few others. I can not just remember now. There was a whole lot of strangers in it, too.

Q. Were you at that time financially interested with any other of the coal claimants now concerned in this inquiry; any other of the parties?—A. I don't know whether I was or not. I don't think I was.

Q. Were you since then and down to the time and including the time of final receipt for your claim?—A. No; I don't think I ever had any transactions with anyone. I might have a little stock in some mining company that some others do, but I ain't sure.

Q. But you are not aware, however, that they do hold stock with you?—A. No; not aware of it.

Q. Were you ever in Alaska?—A. Well, I was several years ago; a long while ago.

Q. How long ago?—A. Oh, it has been twenty-seven years.

Q. You have not been there since?—A. I have not.

Q. Could you say approximately how much you expended on your claim altogether down to and including the time of final receipt?—A. That I could not tell, about \$4,000 I think, down to that time.

Mr. GRAY. That including the purchase price, Mr. Sheridan?

A. I think it is something like \$5,000 up to date. I don't know.

Q. Did you understand that any part of the \$500 furnished to Mr. Clarence Cunningham by you might be used by him for the developments on his own claim?—A. I don't know—

Mr. GRAY. Objected to as immaterial.

Q. Your understanding was it was for the development of your own claim, opening up trails, and opening up prospect holes throughout that area where that group was located?—A. Yes, sir.

Mr. SHERIDAN. That is all.

Redirect examination by Mr. GRAY:

Q. I do not think it is material, but I want to call Mr. Page's attention to one matter. You stated, Mr. Page, that you were not interested in any matters, or financial affairs, with any of these entrymen. I heard Mr. Johnson this morning state, I think, that you and he and some others were interested with Mr. Cunningham in some kind of a company in Alaska, other than being interested in the coal claims—some water-power company, or something of that nature. I want to call your attention to that in order that you may know—A. Yes; I heard Mr. Johnson state this morning that he was connected with a town-site proposition up there, and I had put up some money here, and that some—it was no town site. I think there was a town already there. It was to furnish the town with water and power for light and sell and ship in lumber, and I was interested in that way.

Q. That matter had fallen through and that money was lost long ago?—A. Yes. I did not think of it at the time when he asked me those questions. Yes; we lost our money and that ended it.

Mr. GRAY. That is all. I just wanted to direct Mr. Page's attention to it; Mr. Page had forgotten it.

Mr. SHERIDAN. What town was that? What town site?—A. I think it was Katalla.

Q. Now, I believe you said on your direct examination that you had a pretty general conversation with Mr. Burbidge concerning this matter before you took up your claim in Alaska?—A. No; that was

concerning that Guggenheim proposition that I talked with Mr. Burbidge.

Q. You have given, as near as you can recall, what the substance of that conversation was?—A. Yes; we objected to accepting any kind of an agreement with the Guggenheims that way because it was not fair.

Q. That was the substance of all the conversations you had with Mr. Burbidge on that?—A. Yes, sir.

JOHN A. FINCH, a witness produced on behalf of the claimants, after being duly sworn by the commissioner, testified as follows:

Direct examination by Mr. GRAY:

Q. Will you state your full name, your residence, and your occupation?—A. John A. Finch, Spokane, Wash. My occupation, mining and general investment.

Q. Mr. Finch, how long have you lived in Spokane?—A. Why, here and in this neighborhood, twenty-two years.

Q. Before moving to Spokane where did you live?—A. At Wallace, Idaho.

Q. Are you acquainted with Mr. Clarence Cunningham?—A. I am.

Q. How long have you known him, Mr. Finch?—A. About twenty years.

Q. Have you ever been interested with him in any business enterprises or ventures of any kind?—A. I have been in several ventures with Mr. Cunningham.

Q. Have you ever been interested with Mr. Cunningham prior to having him locate for you a coal claim in Alaska?—A. I have.

Q. During a considerable period of time?—A. During a number of years we were in various ventures—mining ventures mainly.

Q. And during that time you had come to know Mr. Cunningham well, Mr. Finch?—A. Very well.

Q. And what have you to say as to the confidence you imposed in him as the result of associations—past associations which had existed between you prior to 1903?—A. I have always had the highest confidence in Mr. Cunningham's integrity, his energy and industry, cheerfulness under adversity, hopefulness, and many good qualities necessary in a mining man.

Q. Mr. Finch, when, as near as you can recall, did you first become interested in securing a coal claim in Alaska from Mr. Cunningham?—A. I think the matter was first mentioned to me in the early spring of 1903.

Q. By Mr. Cunningham?—A. By Mr. Cunningham.

Q. At that time, what conversation did you have with him?—A. He related to me the fact that he had made two journeys to Alaska, and on the one in the fall before—I think the fall of 1902—he had seen these coal claims, and he thought they would some time or other be very valuable, that they were at the present time in a very far-away place, and rather difficult to see. He thought that a railway might possibly be built to them some time, but we both realized that coal without a railway in Alaska would be no better than country rock, and he thought I had better authorize him to take up a claim for me. We had been in a number of ventures together, some of them having proved very unsuccessful, and he thought perhaps here was a chance to get even, and perhaps better; and without very much thought—I

looked upon it as a mining venture—I authorized him to locate one claim there for me.

Q. Did you have any written agreement or contract with him at that time?—A. No, sir.

Q. Did you have any understanding with him at that time as to what you were to pay, or to compensate him for his services, or was it mentioned?—A. That question was never mentioned.

Q. Subsequent to that time did you see Mr. Cunningham and he report to you as having located a claim for you?—A. I saw him at long intervals of months, perhaps, and he would report to me from time to time the progress he was making.

Q. You knew at that time, did you, that he was also going to locate or had located coal claims for others in that vicinity?—A. Oh, yes. Many of those gentlemen were friends of mine. I knew all about it.

Q. I call your attention to the power of attorney executed on the 21st day of October, 1904, before W. A. Corey, a notary public in this county, which is included in the application papers for coal entry No. 27, and I will ask you if you sent that power of attorney to Mr. Cunningham?—A. Yes, I did.

Q. I call your attention to the affidavit which is attached hereto, and sworn to by you on the 21st day of October, 1904, before W. A. Corey, and ask you if that is your affidavit?—A. Yes, that is my affidavit—my signature.

Q. I call your attention to the following language which appears there:

I further swear that I am now in the actual possession of said coal lands, through my agent and attorney in fact, and make entry for my own use and benefit and not directly or indirectly for the use or benefit of any other party.

Was that statement true at the time you made it?—A. It was.

Q. Had you at or prior to that time made any contract or agreement or had any understanding with Mr. Cunningham, or with any other person, expressly or by implication, under which your claim or any interest therein should inure to the benefit of any other one other than yourself?—A. I had no agreement with anybody that it was other than my claim. It was my claim solely.

Q. Did you have any understanding of any kind or nature affecting it?—A. No; no understanding.

Q. And had you prior to that time had any understanding or agreement that you would combine it with any other claim for the purpose of mining coal therefrom?—A. No, I had not.

Q. I call your attention to the application for patent, which was sworn to by you on the 16th day of February, 1906, at Honolulu, Hawaii, before Alfred T. Brock, a notary public, and I will ask you if that is your signature on that affidavit?—A. It is.

Q. I call your attention to the following language contained therein:

I am now in the actual possession of said coal land, through my duly authorized agent, Clarence Cunningham, of Kayak, Alaska, whom I have heretofore appointed as my agent for the purpose of making locations, records, and entry of said coal land for me and in my name, and authorized him to make the entry for my own use and benefit and not directly or indirectly for the use of and benefit of any other party.

Was that statement true, Mr. Finch?—A. That was true; yes.

Q. You subsequently paid the United States for that land and received a final certificate of purchase therefor, Mr. Finch?—A. I did.

Q. Which was dated April 27, 1907?—A. Yes.

Q. I hand you the duplicate from the entry papers.—A. Yes.

Q. How did you pay that money, if you know, Mr. Finch?—A. Why, it was sent by my cashier to the land office at Juneau.

Q. And you received back a final certificate of purchase?—A. Yes, sir.

Q. Referring now to the date you made that payment and received final certificate of purchase for your claim, the Bozeman claim, I will ask you had you at that time, or at any time prior thereto, entered into any agreement, contract, or understanding, express or implied, under or by the terms of which any interest in your coal claim should inure to the benefit of any person other than yourself?—A. No; I had none.

Q. Had you made any contract, or did you have any understanding that you would, upon securing title thereto, convey it to a corporation thereafter to be formed?—A. I did not.

Q. Or were you under any obligation or promise whatever that you would convey it to any such corporation or association or that you would unite it with any other claim for the purpose of mining or working it?—A. I was not.

Q. At that time it was your own property, free from any limitation by promise or understanding of any nature, Mr. Finch?—A. It was; I so understood it.

Q. Between the date when you first authorized Mr. Cunningham to make an entry of a coal claim for you in Alaska and the date when you received your final receipt you had seen Mr. Cunningham, had you, Mr. Finch?—A. Oh, yes; several times.

Q. And conversed with him on those occasions?—A. Quite fully, yes; quite fully.

Q. At any of those conversations had you ever agreed upon any system of development or method by which you should mine your coal claim?—A. No.

Q. Are you interested in any other ventures in Alaska with Mr. Cunningham or were you at that time?—A. I was in with one other venture.

Q. What was it?—A. It was helping him to buy an oil rig, and bore for oil on the location of some oil claims. I bought a boiler and drilling outfit, and all the paraphernalia was purchased in San Francisco and shipped to Seattle, and several months were spent in boring for oil, but without any very great success, and we have regarded the venture as a losing one. I was also interested by other people in oil there, but it all proved almost a complete loss.

Q. How much, roughly estimated, how much money did you lose in this oil venture there, Mr. Finch?—A. I think about \$14,000.

Q. Mr. Finch, you were present with Mr. Cunningham and some other gentlemen some time in the year 1905 when the question of sending a practical coal man up to look over this coal field was discussed, were you?—A. I think I was; yes. I remember the fact that we talked about it.

Q. How did it come up, if you can recall, and who were present?—A. At that time I had not been to Alaska to see the coal nor had any of my own friends seen the coal, and while we had great faith in the general honesty and truthfulness of Mr. Cunningham's statements as to the amount of coal which cropped out here and there, we felt that he was not an expert coal-mining man, and before we spent a

further large sum of money and finally paid for the claims we felt that we had better have some expert visit the field and report on the quality of the coal and the conditions of the veins in which it was lying, the method of possibly opening them, and the amount of out-crop on the different claims, etc., and to give us a general knowledge of each particular claim, and also of the value of the country, of the coal-mining country, feeling that if there were only two or three claims that had any coal there that it would not be worth while to go on with it, but it would take a large coal field to induce transportation and all its attendants which were necessary to make the coal-mining claims profitable.

Q. And at that time what was determined should be done?—A. Well, we were largely in the mining business—and when I say “we” I mean Mr. Campbell and myself, my associate for many years. We did not have in our employ any coal-mining expert. We knew Mr. Smith, of Seattle, and we knew that he had been a practical coal man, and we thought perhaps he could recommend somebody, and Mr. Cunningham suggested that he perhaps could, and that led, in the course of a short while, to the engagement of a Mr. Hawkins, who went up there and spent some weeks on the property and made a report on the measures, the coal measures, and the veins generally, and the topography of the country, etc.

Q. You knew that Mr. Smith was one of the entrymen also?—A. Yes, sir.

Q. And also had a claim in that same district also?—A. Yes, sir.

Q. Now, at that time, Mr. Finch, was there any talk of a combination or a consolidation of these coal claims, or coal entries, or how did you come to discuss it together?—A. Why, our offices are convenient here. Mr. Cunningham, I think, probably felt a little nearer to me, perhaps, and Mr. Campbell than others here, and I have forgotten just how the matter came up, whether I thought of it or whether Mr. Cunningham thought of it, but perhaps three or four of us discussed it. I don't remember how many, and I think we authorized Mr. Cunningham at that time to confer with Mr. Smith and engage a man.

Q. Well, was there any discussion at that time of a consolidation of your claims or combining them?—A. Oh, no, no. None whatever.

Q. You simply each of you wanted to get such information as you could concerning that district?—A. Yes, that was it; to determine whether we should go on paying out further money and finally pay out a large sum that would be necessary to pay for the claims there, and perhaps there was—we did not know how deep it was, but we knew the difficulties of the country. We had lived on the frontier a great deal ourselves and knew how expensive it was to get provisions and mining supplies and the necessities that are required for opening mines, and we felt probably that we would be called upon to spend quite a bit more money and we wanted to know about it before we did so; we wanted to know about the coal, about its general value, and the general lay of the land.

Q. You wanted that for your own personal information?—A. For my own personal information, and the others felt the same way.

Q. Was there any suggestion at that time, Mr. Finch, of combining your interests, except simply all of you contributed to get this general information concerning that district and the coal measures and

other information?—A. That was all it was, simply just to get the general information. I can not recall that we even talked about combining or thought about it at all.

Q. Mr. Finch, you were present at your office on the 15th of May, 1907, when a number of coal claim owners met and discussed certain matters?—A. I was.

Q. And I will hand you now Claimants' Exhibit No. 3, and ask you to say if it is as you recall a substantially correct statement of what occurred at that time [handing witness paper]?—A. I think it is. I can not be sure whether it is in detail correct, but I think in a general way it is correct.

Q. Before I go into this there is one further question: After you paid Mr. Cunningham the first sum of money which he asked you for at the time you authorized him first to locate a coal claim for you in Alaska, did you pay him any other or further sums on that account?—A. Oh, yes.

Q. How were those sums paid?—A. They were usually paid upon the presentation of a sight draft drawn by Mr. Cunningham wherever he might be at the time, and I paid them without any question.

Q. Did you have any detailed knowledge, or only a general knowledge of about how this money was spent by Mr. Cunningham?—A. Simply a general knowledge of how it was being expended. I knew that from our knowledge of the business in a general way, and from having done the same work myself, that a great deal of money would have to be spent in preliminary work, building trails, and the finding of ways about, and the building of cabins, and the preparation of wood and supplies, and I knew the route by which they got there from Katalla, and I knew that it required a great many—perhaps two or three times as much as it would have required in a civilized or semicivilized land—and so I paid whatever drafts he made feeling the greatest confidence in his integrity, and that I do now.

Q. But you understood, did you, that together with other persons Mr. Cunningham was locating claims for you, contributed all of your part to these general expenses?—A. I did in a general way, understood that to be a fact.

Q. And from your own experience in developing the west, Mr. Finch, you thought that was entirely proper?—A. Entirely proper, and not only proper, but it was just to the different entrymen, because we would, each, of course, been compelled to do the same work, or perhaps a large part of it, on one claim, had there been but one.

Q. Did you consider that that in any way placed you under any obligations to hold your claim for the benefit of any of these other claim owners or consolidate it with them?—A. It did not.

Q. For operation or otherwise?—A. It did not.

Q. Now, returning again to Claimants' Exhibit 3, the minutes of this meeting in May, 1907, held at your office in this city, I call your attention to the fact that after that meeting the following is shown to have occurred:

Thereupon, on motion of Mr. Sweeney, seconded by Mr. Finch, the chairman was authorized to appoint a committee of five, who should organize a corporation for the purpose of acquiring the coal claims owned by those present and those of such other claim owners as might desire to join the corporation, the committee to secure deeds to the mining claims and to issue receipts therefor and to take all necessary steps to complete the organization of the company ready for the transaction of business.

I will ask you, Mr. Finch, if at any time prior to this meeting and these proceedings you had had any understanding with Mr. Cunningham or any other of the entrymen by which you had agreed to organize a corporation or turn your claim over to a corporation?—A. I had not.

Q. This was the first understanding along those lines?—A. Yes; this was in May, 1907.

Q. Had you at any time prior to that time agreed or understood with them that you would unite with them in the joint development or joint mining, or that you would consolidate your claims for the purpose of mining them?—A. No, sir; we had not.

Q. I now hand you Claimants' Exhibit No. 4, being the minutes of a meeting held at your office on the 16th day of July, 1907. You were present at that were you?—A. I was.

Q. And a committee was appointed at that time to go to Salt Lake to confer with some representative of the Guggenheim interests?—A. A committee was appointed.

Q. Now, subsequent to the meeting in May, 1907, had you executed a deed to your coal claim, Mr. Finch?—A. No.

Q. Did you at any time execute such a deed?—A. I did some time after that meeting, some time after the July meeting I think it was.

Q. And what did you do with it?—A. I gave it to my attorney to be filed—to be filed in the Union Trust Company, of Spokane, providing a sufficient number, or a large number of the entrymen who were at that meeting, also sent their deeds in, or in case the majority of them did not send their deeds, I regarded it as useless to file any, and I had serious doubt whether a majority would.

Q. As a matter of fact were those deeds ever filed with the Union Trust Company?—A. I don't think they ever got to the Union Trust Company. I don't remember. I think they were filed with the attorneys of the different people here. I won't be sure about that, but I think so.

Q. Did you at that time consult with your attorney as to whether you had the right to execute a conveyance of it?—A. I asked my attorney's advice.

Q. What advice did you get?—A. He said we undoubtedly had the right to deed our claims and consolidate, but I thought perhaps it might be prudent at that time to await the issuance of patent to a title from the United States.

Q. Was that Mr. Wakefield, Mr. Finch?—A. Yes.

Q. How long had he been your attorney, Mr. Finch?—A. Many years.

Q. (Mr. GRAY.) How long had he been your attorney, Mr. Finch?—A. Many years.

Q. I hand you Government Exhibit No. 10, which is a copy of a purported memorandum signed by Mr. A. B. Campbell, Clarence Cunningham and M. C. Moore, or a copy of one, and I will ask you if you ever saw that, Mr. Finch?—A. Well, I don't know whether I have seen it or not. I think at the time I read this over—this is the—

Q. Guggenheim memorandum?—A. The tentative agreement with the representatives of the Guggenheims.

Q. Yes. Was that proposition ever consummated?—A. It was not.

Q. At the time of your deed?—A. Why, I think my attorney returned it to me and I probably thought it was all up and destroyed it.

Q. Did you understand, Mr. Finch, when this committee went to Salt Lake that they had the power to bind the various claim owners or claimants as to require them to convey their claims, or in such a manner as to require them to convey their claims?—A. No, sir; they had not the authority.

Q. What was your understanding of their authority, Mr. Finch?—A. My understanding of their authority was that they were going to Salt Lake and interview the representatives of the Guggenheim interests and learn if an agreement, such as was talked of and such as is represented in that paper, could be consummated. In case they could, they were authorized to have a tentative agreement drawn up subject to the approval of the various entrymen at another meeting, perhaps, and that the holding of the other meeting would depend upon events in the meantime after they returned.

Q. Was any such meeting ever held?—A. No; no such meeting was ever held.

Q. Mr. Finch, what did you understand Mr. Cunningham was receiving for his services in looking after the location of these claims?—A. Why, I think that matter was talked of at one time or another, and I understood he was taking from the money he was receiving from all of us, for the purpose of paying certain amounts, or that he was getting about \$200 a month and his expenses. That is my remembrance of it.

Q. Did you know whether or not, Mr. Cunningham, that he had any coal claim in that district?—A. I did.

Q. What are the facts? You knew he had one?—A. I knew he had one and I presumed he was looking after that, naturally, and he was looking after mine and looking after the claims of the other entrymen.

Q. Mr. Cunningham ever ask you for any other or further instructions than that which he was receiving?—A. He did not.

Mr. GRAY. You may take the witness.

(And thereupon the further hearing of this inquiry was adjourned to 9.30 a. m. of December 7, 1909.)

DECEMBER 7, 1909—9.30 A. M.

INQUIRY RESUMED.

Appearances: Hon. William J. McGee, United States special commissioner; Mr. James M. Sheridan and Mr. William B. Pugh, counsel for the Government; Mr. E. C. Hughes and Mr. John P. Gray, counsel for the claimants.

JOHN A. FINCH on the stand.

Cross-examination by Mr. SHERIDAN.

Q. Mr. Finch, how old are you?—A. I am 56.

Q. At the time that you first became interested in this coal claim of yours in Alaska, were you engaged in the same business in which you are engaged at the present time?—A. I was; yes.

Q. What, generally, is the nature of that business?—A. Generally mining, real-estate investments; but chiefly mining.

Q. Now, approximately, how many years have you been engaged in that business?—A. Why, twenty-five years, perhaps; twenty-five or twenty-six years.

Q. At the time when you had a claim located in Alaska—your present claim now under investigation—were you financially interested with any of the other entrymen now concerned?—A. Yes; I was.

Q. Name those with whom you were so associated.—A. Mr. Harry White, of Wallace; Governor Moore, of Walla Walla. Mr. Campbell, one of the entrymen, has been my associate here for more than twenty years. Mr. Cunningham, my attorney in this matter, has been interested with me; and perhaps there may have been something at that time that we were mutually interested in outside of this claim. I think there was. I don't recall just at present—yes; Mr. Henry Wick, of Youngstown, Ohio.

Q. Those were all the entrymen with whom you were financially interested?—A. R. K. Neill, of Spokane.

Q. Any other?—A. I think that is all. I don't recall others at present.

Q. Has your connection with these gentlemen as described by you continued down to date?—A. No; not all of them. Mr. Neill has dropped out. The other matters that Cunningham and I were interested in have dropped out or been abandoned. My connection in various industries with the others, I think, continues about as it was at that time.

Q. Now, when did you say that it was that you first conversed with Mr. Clarence Cunningham about this coal claim?—A. Some time early in 1903. I can't remember exactly.

Q. Where did this interview occur?—A. I think it occurred in Spokane.

Q. Now give us, as nearly as you can recall, the substance of what conversations you had with him concerning the location of this claim.—A. He told me about his journeys to Alaska. He had been up there the autumn before and during the winter, I think, of 1903; during the autumn of 1902 and winter of 1903. I think he had made two trips. He informed me of the general characteristics of the country and of the large outcrops of coal veins and coal measures which he had seen; that it was not far from the sea, 30 or 40 miles, perhaps; that he thought some time or other it might be valuable, and the quality, he thought, was very good. He was not so sure of that, but in any event he advised me that I had better, perhaps, authorize him to locate a claim for me, and I think I did. I think I did.

Q. Was this, in substance, all the conversation concerning this matter that you had with Mr. Cunningham at that time?—A. Several years have elapsed since that time, and I can't say whether it was. I don't undertake to say this from recalling the words, but simply from what probably took place.

Q. Now, when did you next meet Mr. Cunningham?—A. I can't say. I met him once or twice a year usually, but I can't remember the dates.

Q. On the occasion of his returns from Alaska?—A. Usually, usually, although not always.

Q. Were these conversations, as nearly as you can recall, generally in substance about the same as that just stated by you?—A. Why, no; I can't say as to that. One makes no mental notes of conversations that are not of great importance, you know, so one would remember the exact talk after several years.

Q. Was the general drift of this conversation, if you can recall it, concerning this claim, to the effect of their development or their possible use?—A. Yes; the conversation related to the development of the claim, and after the law, or the United States statute, was made applicable to Alaska there was probably some talk of relocating.

Q. You mean the 1904 act?—A. 1904. You see, I became interested in 1903 before the coal-land act was applicable to Alaska, and in 1904 a definite location of my claim was made and the other location was abandoned.

Q. Now, I believe you stated that you made a payment of money to Clarence Cunningham when you sent him to Alaska or authorized him to locate this claim for you?—A. I did.

Q. About how much, if you can recall it?—A. The first payment, I think, that I made was \$500, just as a lump sum.

Q. Now, what instructions, if any, had you given Mr. Cunningham concerning the expending of this money?—A. I don't recall that I gave him any special instructions. I relied fully upon his judgment in that matter. We had been associated many years in various enterprises of a similar nature; mining enterprise, and I knew that he understood as well what to do as I would myself, and I trusted him completely.

Q. Then simply on the representation by Mr. Cunningham that, in his own opinion, that this was a good coal community you advanced him this money?—A. I did.

Q. You did not require of him any further detailed presentation or of the advisability of the commercial possibilities of this investment?—A. I did not; not at its inception; no.

Q. Now, about how frequently in a year did Mr. Cunningham draw on you for money?—A. Two or three or four times a year, it varied. There were no regular intervals at all; just whenever the work up there needed money.

Q. What did you understand to be the purpose for which he drew on you?—A. For doing work on my own claim and for paying the expenses of building trails and of erecting cabins; of making surveys and all the work incidental to opening up a new and remote mining camp.

Q. You understood that part of the funds furnished by you was for use for the purpose of building these common trails throughout this group of entries?—A. I did.

Q. And for the purpose of opening up the coal and showing its quality and quantity on all of these entries?—A. Not necessarily on all of the entries, but there was no segregation as far as I was concerned. I did not bother my head about it. I simply desired that the work be done on my own claim, and I was willing, quite willing, to pay my share or any share other than the whole of whatever the trails cost, realizing that I might have to do all the work myself if others dropped out.

Q. What representations did Mr. Cunningham make to you that induced you to allow these funds to be used for the building of

trails and improvements of this group of entries other than on your own claim?—A. It was hardly necessary for him to make any representations to me about that matter. I had had a long experience myself in opening and developing mining claims in distant lands, far away from towns, and I knew that no supplies or no actual work could be done on any of these claims until a trail through the thick forest and tangled brushwood had been made in order to permit supplies to be packed there. I knew that men could not work in that inclement climate without cabins to cover them. I knew that many things had to be done there in order to make life comfortable, and it was unnecessary for him to go into details to me as to what he should spend this money for or how. I knew that he understood the business just as well as I did.

Q. Did you realize or believe that these cabins and these trails were being built for the sole benefit of your claim?—A. I did not.

Q. What was your understanding in that respect?—A. My understanding was that there had to be some central point there where the men could get under shelter; where they could live while they were doing work, especially during the inclement seasons of the year, and they are long; and I knew that these cabins were built for the use of men who worked on any of the claims, my claims, other claims; and it saved each one of us the expense of putting up cabins on our own claims, and therefore I was not only willing but very glad to contribute to the cost of the cabins and the trails.

Q. Did Mr. Cunningham make any suggestion to you, any mention in connection with the common development of this property, such as the building of trails and the opening up of cuts, etc., concerning the desirability from an economic standpoint of operating all of these claims jointly?—A. I don't know that that was gone into in detail, but we fully understood the whole case, and it was unnecessary for him to explain at any time to me the situation. I understood it so well and so did he. We had done the same work ourselves many times before.

Q. Now, what was your understanding concerning the development of these claims?—A. My understanding concerning the development was that the outcrop of coal was first to be exposed on different claims; that is to say, on my claim; and I of course understood that he was doing the same for other claim owners. I was fully conversant with the names of them and knew from time to time about the work. They had opened up a coal measure on this claim or a coal measure on another claim, and remember all these gentlemen were intimate friends of mine. I was interested in the development work upon their claims as well as the development work upon my claim, and I realized that it would take many exposures of coal measures there to create a mining field sufficiently large to justify the expenditure of perhaps millions of dollars to make it valuable in the markets upon the Pacific coast.

Q. That was all the understanding concerning the—A. No, I would not say it was all the understanding.

Q. Well, as nearly as you can recall.—A. It was, in part, the understanding.

Q. What was your plan at that time; that is, when matters had progressed to the point where trails had been commenced over this group of claims, and cabins had been put up as described by you;

what was your plan as to the development of your own individual claim, and by that I mean the operation of your claim?—A. My claim lay off to one side of the cabins, toward the east and north, and I did not expect, owing to the location of it, that large work would be done upon it, but that a sufficient amount of coal would be opened there to show that it was a good coal claim, and that, I was informed, was done, and a description of the work at the time.

Q. Why did you believe that a large amount of work would not be done on your claim?—A. Because it could not be, owing to the location of it. The railway or tramway could not be worked from my claim very well to any central point to where a railroad could get the coal from it at an early date, and therefore it was not as fortunately placed as some other claims.

Q. Was it, therefore, your idea that the coal from your claim would have to be operated through a tunnel from some other claim?

Mr. GRAY. I object to that, what Mr. Finch's idea was. I desire to object to that question as incompetent and irrelevant, what Mr. Finch's idea was. It is not material or relevant to this hearing.

(Question read.)

Mr. SHERIDAN. I submit, Mr. Commissioner, that this is relevant and germane.

The COMMISSIONER. He stated what he expected to be the improvements on his own claim.

Mr. SHERIDAN. He stated what the difficulty was of operating his claim, and therefore why it was that large openings had not been made upon it. I want to know, therefore, what was his plan with reference to the operation of his claim.

Mr. GRAY. That is not what you asked him. You asked him what his idea was.

The COMMISSIONER. That was your question; what was his plan?

Mr. SHERIDAN. No. Just read the question.

(Question read.)

The COMMISSIONER. I think you can take the answer to that question.

A. I can not say that I ever formed any definite idea or plan of just how the coal in my claim would be mined. I never was on the ground personally, and I doubt if I ever formed any definite idea about it.

Q. Have you since then matured any plan for the development of that claim?—A. I have not; no definite plan.

Q. I now hand you Government Exhibit No. 5, Mr. Finch, and ask you to state if you have ever seen a copy of this statement? [Witness examines exhibit.]—A. I can't say definitely whether I saw a copy of this or not. I was in California and Arizona and Mexico that winter, and I think I did not return here until April. I presume I may have seen a copy of this, but I really can't say definitely.

Q. You say you presume you returned in April. You mean April, 1904?—A. 1904.

Q. I now hand you Government Exhibit No. 6, and ask you to state if you ever received a copy of this statement; and if so, from whom? [Witness examines statement.]—A. I think I saw a copy of this statement. I know that I received a report in some way relative to the findings of Mr. Hawkins, as to the value of the coal

field and the quality of the coal, and I see it is embraced in that exhibit.

Q. Do you recall from whom you received this?—A. I can't say.

Q. I now hand you Government Exhibit No. 7, a report of Mr. H. L. Hawkins on this group of entries, and ask you to state if you received a copy of that report; and if so, from whom? [Witness examines exhibit.]—A. Yes; I received a copy of the report. No doubt this is the same report made by Mr. Hawkins. I think I got it from Mr. Cunningham.

Q. You can not recall when?—A. I can not recall when.

Q. I now hand you Government Exhibit No. 8 and ask you if you received a copy of this statement; and if so, from whom? [Witness examines exhibit.]—A. Why I am inclined to think I got a copy of this statement. I was here at the time and I think I got a copy of that statement in the spring of 1907.

Q. From Mr. Cunningham?—A. I think so.

Q. I now hand you Government Exhibit No. 9 and ask you to state if you received a copy of this statement; and if so, from whom? [Witness examines exhibit.]—A. Yes, I received a copy of this statement. It is of recent date and I remember looking that over.

Q. From Mr. Cunningham?—A. I remember that amount. From Mr. Cunningham.

Q. I now invite your attention to Government Exhibit No. 3 and especially that part of it purporting to be a copy of what is known as the Cunningham journal, and I direct your attention to page 1 of this copy of the journal wherein it is stated that it was agreed that each subscriber should have one-eighth of his stock issued to Cunningham in consideration for his services in securing this land. I will ask you to state what your understanding was in that connection.—A. I never heard of a journal, nor did I ever see it. I have not seen it to this day. I have heard about an incident connected with a certain land agent named Glavis, who is said to have stolen the journal and taken it away with him. As to this one-eighth interest I know nothing about it, nor did I ever know anything about it.

Q. That is all you know in this connection?—A. In connection with that exhibit. That is all I know in connection with that part of it to which you called my attention.

Q. Do you know that Mr. Glavis stole this journal?—A. I do not. I simply stated that I heard he had.

Q. From whom did you hear that?

Mr. GRAY. Object to that as immaterial and hearsay.

A. I can't remember whom I first heard make the statement. I can't remember.

Mr. SHERIDAN. I don't see that it is any more immaterial than the reference to it which seems to have been studiously carried out by some of the witnesses.

Q. Can you recall who made such a statement to you, if anybody?

Mr. GRAY. I object as immaterial, obviously irrelevant. He has already answered it.

Mr. SHERIDAN. He has said he could not recall who first told him.

Q. Do you recall anybody that told you?

The COMMISSIONER. What is the purpose of the question, Mr. Sheridan?

Mr. SHERIDAN. The purpose of the question is, I asked him a question concerning this one-eighth interest, and Mr. Finch has volunteered the information that the journal was stolen by Mr. Glavis, and when any witness volunteers any information not called for by the question I can move to strike it out as irrelevant, or I can cross-examine on that point.

Mr. GRAY. Where is that last rule obtained? In what book of evidence?

Mr. SHERIDAN. Read your evidence and you will see.

The COMMISSIONER. He said he heard that it was stated that Mr. Glavis had stolen the record; that he knew nothing of his own knowledge. I don't see that this is material to this inquiry and I will sustain the objection.

Mr. SHERIDAN. If it is not, of course the commissioner has the power so to rule, but I desire to emphasize the willingness of the witnesses for the claimants to testify to a charge against a man, concerning which they know nothing.

Mr. GRAY. Mr. Sheridan's suggestion as to Mr. Finch's testimony is both unfair and it is not borne out by the record. The commissioner and everyone who has heard his testimony will bear me out in saying that his testimony has been frank and free from bias or prejudice, and there is not anything which he has said, or any demeanor that he has exhibited, that calls for any such statement from counsel for the Government.

The COMMISSIONER. I have ruled on the objection, and as far as that question is concerned it is at an end. Any other questions, Mr. Sheridan?

Mr. SHERIDAN. Yes; several others. I have a right, however, in the interests of the Government to revert to the fact of his volunteering certain statements—

The COMMISSIONER. You can take an exception to the ruling.

Mr. SHERIDAN. To his statement charging Mr. Glavis with stealing something without any question from me that elicits such an answer.

Mr. GRAY. I do not reply simply because it is not worth while.

Mr. SHERIDAN. As I understand you, you never saw the original of which this purports to be a copy [hands witness paper]?

Mr. GRAY. I object to this as not material. That question has already been ruled upon. I understand we are paying for this.

Mr. SHERIDAN. Yes, you are; but I have a right to cross-examine the witness.

The COMMISSIONER. Yes; you are paying for the direct and cross-examination of your own witnesses.

Mr. HUGHES. I don't understand that to be the rule.

Mr. SHERIDAN. The rule is explicitly set out in the rules of practice to that effect.

The COMMISSIONER. He has already answered that question very plainly, Mr. Sheridan, that he never saw the original.

Mr. SHERIDAN. Of course, I am not responsible—

The COMMISSIONER. Not for my ruling.

Mr. SHERIDAN. For the elimination of any evidence.

The COMMISSIONER. I am wholly responsible for it and cheerfully take the consequences of any erroneous ruling I may make.

Mr. SHERIDAN. Very well, sir.

Mr. GRAY. I was just going to ask the commissioner, under the ruling, that it is understood also that Mr. Sheridan pays for Mr. Sheridan's testimony.

Mr. SHERIDAN. Well, then, if that question be relevant to this issue I hope that also the commissioner will pass on whether or not the vaudeville performances that we have had from the other counsel while in Seattle will have to be paid for by them. There were a lot of witticisms gotten off there.

Q. I now hand you Government Exhibit No. 29, Mr. Finch, and ask you to state what you know concerning it.—A. I know nothing of this excepting by hearsay. I know nothing of it definitely. It relates, as I gather from the little I have read, of the formation of a company to build a railroad.

Q. The Bering River Railroad?—A. Yes. I did not become interested in that company and I don't know much about it excepting by hearsay.

Q. You hold no interest in it at the present time?—A. None.

Q. Mr. Finch, did you at any time execute an affidavit concerning your claim for any agent of the General Land Office, other than those affidavits set out in the original entry papers?—A. I think I did, one to Mr. Love. I think it was sent to the general land office at Juneau, but I don't think I signed any other.

Q. I now call your attention, Mr. Finch, to Claimants' Exhibit No. 3, being the minutes of a meeting held in the office of Finch & Campbell, Spokane, Wash., May 15, 1907, and I ask you to state how it was—for what purpose that meeting was called in your office?—A. Our office was a convenient meeting place, located in the city of Spokane, and it was common for two or three or several of the entrymen to meet Mr. Cunningham at our office upon his return from his trips to Alaska to hear any report that he might have to make regarding the work going on up there; and meetings did take place before this and afterwards in our office relative to his report and to the business connected with the coal fields there.

Q. You had no objection to the facts and the minutes as set out in that exhibit?—A. I have not read that, but I am inclined to think this is a copy of the minutes kept by Mr. Burbidge at that time and I have no criticism to make of it.

Q. I now call your attention to Claimants' Exhibit 4 and ask you if that truly sets out the purport of the meeting held?—A. Yes, it does. That is one of which I was chairman.

Q. I now hand you Government Exhibit No. 10 and ask you to state if at any time you received a copy of this document; and if so, from whom [witness examines exhibit]?—A. I can't state from whom I received a copy of this document, but I saw a copy of it soon after the gentlemen returned from the Salt Lake meeting in August, 1907.

Q. Did you authorize the entrymen who appeared at the Salt Lake meeting to make this offer?—A. I did.

Q. And as I understand it, Claimants' Exhibits 3 and 4, showing meetings held in your office, were the meetings which led up to this committee being sent to Salt Lake?—A. They were.

Q. This Mr. Wakefield, an attorney here in Spokane, as I understand it from the testimony already given, what was his connection with these entries?—A. He had no connection with them that I know of.

Q. How did it come to be that certain deeds had been placed in his hands concerning these entries?—A. Because he was the attorney for myself; also he was the attorney for Mr. Campbell, and I think he was favorably known by perhaps two or three others of the entrymen, and it was natural that we should select him as a depository for these deeds.

Q. Am I to understand that he was counsel generally for the claimants in this case?—A. No; he knew nothing about it.

Q. Merely in connection with these deeds?—A. As I remember it, that was his first connection with the matter. I can not be sure when he first had anything to say about it, but I think that was the time.

Q. Did his connection with these entrymen cease when that proposition—the Guggenheim proposition—was terminated?—A. It did.

Q. I call your attention, Mr. Finch, to the power of attorney executed by you dated October 21, 1904, and which is in evidence under stipulation of counsel with the original entry papers, and ask you to state if you can recall from whom it was that you received this power of attorney for your signature?—A. Who drew it up?

Q. Yes.—A. Really, I can't recall, sir. That is my signature there and this writing here [showing]; but I can't recall who drew it up or from whom I received it.

Q. Other than Mr. Wakefields, did you, from the time of the location of your entry down to and including the time of final certificate, consult any other counsel in this connection?—A. I don't recall consulting any other counsel, except on one or two occasions Mr. Ballinger, of Seattle.

Q. When was that, as nearly as you can recall?—A. In the spring of 1908, I think.

Q. Was that subsequent to final certificate?—A. Oh, yes; our final certificates were issued in 1906, I think.

Q. Now, were there any other entrymen present with you; any other entrymen present with you on that occasion?

Mr. GRAY. I object to that as immaterial and irrelevant.

The COMMISSIONER. The objection is sustained.

Q. Have you any other interests in Alaska, Mr. Finch?—A. I have the remnants of some oil interests there and an interest in machinery connected with drilling for oil, but that is all.

Q. As testified to yesterday?—A. Yes.

Q. Approximately how much did you spend on your claim from the time of this location down to and including the time of final certificate?—A. I can't say definitely how much was spent upon my claim, but I contributed something like \$2,500 to the work upon my claim, and the aggregate of my contribution to the trails and cabins and so on I can't say what part of that was actually spent upon my claim.

Q. This does not include the \$1,600 paid for the land?—A. No.

Mr. SHERIDAN. That is all.

Redirect examination by Mr. GRAY:

Q. Mr. Finch, Mr. Wakefield's connection was simply with regard to the advice concerning the organization of the company or corpora-

tion in securing deeds from those who were present, as was proposed at that meeting in May?

Mr. SHERIDAN. I object to that question as testimony by Mr. Gray.

Q. Well, I will ask you to again state just what Mr. Wakefield's connection with this matter was; in what respect he was advised with?—A. After the meeting in May he was advised as to the report that had been made, and he was simply connected with these entries as far as I know in connection with what passed at the meetings in May and July, 1907.

Q. Now, in answer to a question of Mr. Sheridan, you said you authorized the committee that went to Salt Lake to make this agreement, Government Exhibit No. 10. What did you intend by that?

Mr. SHERIDAN. I just submit on the record that this is another of these multitudinous explanations of what the men mean.

The COMMISSIONER. He has a right to explain his answer made on cross-examination on redirect. That is one of the rules of evidence, as I understand it.

Mr. SHERIDAN. I submit this is one which requires no explanation.

The COMMISSIONER. Well, he has asked him the question.

A. The authority of the gentlemen who went to Salt Lake was not without limit. They were not authorized to make a definite and binding agreement, but to make a tentative agreement which would be again submitted to the entrymen upon their return, and if a sufficient number chose to approve of it then it would be binding upon those and those only who so approved it.

Q. Had you ever seen this proposed agreement before they went there?—A. I had not.

Q. As to this particular agreement you knew nothing until their return?—A. Until their return.

Q. Now you said that Mr. Cunningham used to come up to your office and meet 3 or 4 or several of the entrymen there upon his return from trips to Alaska and that you would then consider his reports. What reports did you mean, Mr. Finch?—A. In a general way he would inform us as to the work he had done during the previous few months, several months, and in a general way as to the progress of the development work upon the coal measures; sometimes as to the development work upon the individual claim of one of those present; sometimes as to trails; sometimes as to building boats to get supplies from the coast to the place where the trail met the water, and sometimes as to the possibility of getting the coal out; as to the quality of it and general information regarding the whole country. It is hard to tell all that was stated.

Q. Mr. Finch, subsequent to the return of that committee from Salt Lake with this writing, Exhibit No. 10, was any meeting called to ratify or act upon that?—A. There was not.

Q. Mr. Finch, I desire to call your attention to Government Exhibit No. 5 and ask you if you at the time you saw it if you noticed the following—if you ever did see it—if you noticed the following language in speaking of the work done by Mr. Hawkins:

Our development of it has proven very satisfactory. Again our development on Trout Creek, where all our work this winter is being concentrated, consists of 4 tunnels being respectively 50 feet, etc. We are awaiting instructions from the department; we are working about 7 men.

I will ask you if the use of the plural term in that report reached your notice at that time or at any time, and what, if any, consideration you gave to that question?—A. I can't say that the use of the plural pronoun "we" and "our" impressed me particularly. I don't think I ever noticed it. It was very natural that he should use the plural instead of the singular, it seems to me, in a report which was made to all the entrymen, or copies of which were sent to all the entrymen, or as many of them as he happened to think of at the time, and he could hardly say "you and yours" unless he made a separate report to each one. I don't know that I ever noticed it or attached any importance to it.

Q. Was it your understanding that certain general development work was being performed over that entire field, and that you, together with the others, were paying for it; ever impressed you as placing upon you any obligation to join with them in the working of your claim and theirs jointly other than this mere prospecting work?—A. It never did.

Q. And did you consider that you were under any obligation or promise of any kind to join with any other of these claim owners in the development of your claim—permanently develop your claim—and also the mining of it because of this general work which was done in the opening up of this country?—A. I did not.

Q. Mr. Finch, I am going to call your attention to Government Exhibit No. 6, which you saw a few moments ago.—A. I have forgotten what it is about. Yes, it is Hawkins's report.

Q. I desire to call your attention to certain language which Mr. Cunningham employed in this report and ask you whether or not it came to your attention at that time, at the time you received it:

His report is now being prepared, together with maps, showing the topography of the fields, strike and dip of the veins or measures, thickness and amount of coal shown in each vein above tunnel level, with analysis of same; in addition to the above, his map will show contours and levels from our lands to the ocean, with charts and soundings of the channel where we are likely to build coal bunkers and wharves, besides giving approximate route and length of proposed railroad to both the lands owned by the English Company and ourselves.

Did that come particularly to your notice at that time? Did you give it any particular consideration?—A. I think I did. I think I did. As to the report upon the coal, it was very interesting. As to the report upon the means of getting it to the seaboard, that was also interesting. But as how the railroad would ever be built—as to where the harbor would be, and as to our doing it, I never felt that these entrymen were able to join together and spend two or three millions of dollars necessary to do all of that work. I, however, thought, as far as my own interest was concerned and the interests of others, that if our coal measures were of sufficient value somebody would some day build a railroad, but I didn't know when, and it was natural for Mr. Cunningham—this report from him to all the entrymen, I think, probably is identical. Just a copy was sent to each one. It was natural for him to embody in this report, and it was proper, too, all the information and all the opinions relative not only to the coal measures, but also to any means that could make the coal from these measures available, and I don't think that he had any definite expectation that all these entrymen would join in building the railroad or coal bunkers or anything else. That all was in

the air. It might happen that some of them could help, but I knew that others could not, and in a general way that would be my impression regarding that clause.

Q. Had you contemplated, yourself, the building of any wharves or bunkers or railroad?—A. I had not.

Q. I call your attention to the following language:

You are also advised that we are holding considerable tracts of land for timber, which we will require in large quantities, but there is no law in Alaska for acquiring title to timber lands, consequently we would consider it advisable to try to secure some cheap scrip and cover all we can before beginning any very extensive operations.

What do you know about that, and what impression did that statement make on your mind, if any?—A. I remember that part of this report perhaps. Anyway, I remember that it was talked of that it would be advisable to acquire timber lands, but I felt we had better acquire our coal lands and let the timber take care of itself at some future time. I, as far as I was concerned, did not regard with favor going to a great expense of acquiring timber lands before I had acquired title to my coal land. I merely wanted to do the necessary work in connection with that and then trust to future developments to determine whether we would need any timber or not.

Q. Did you ever agree to join with Mr. Cunningham to buy any timber or any scrip, or with any of the other entrymen?—A. We talked about that, but I never agreed to it or became a party.

Q. Was that ever put to you as a proposition for you to enter into individually, if you desired?—A. Separately, it was, yes; but I declined, for what reason I don't know just now.

Q. Did Mr. Cunningham offer you any other proposition for investment up there?—A. Yes; he suggested, and I think urged mildly, that I join him in building a waterworks for the town of Katalla, and in establishing a lumber yard and planing mill there, and perhaps some other things incident to the building of the town of Katalla, but I declined to become interested in those projects, feeling that as yet I had no title to my coal claims, and I had already invested quite a sum of money there and thought that the town of Katalla would take care of itself a little later on. At the same time, I felt that Mr. Cunningham was justified in trying to promote the town and its welfare, but I didn't want to join in it.

Q. And that and the timber deal were both of them put to you as an independent proposition, independent of your ownership of a coal claim?—A. Oh, quite so. Yes; quite so.

Q. You spoke of an understanding which you had concerning this prospect work. How did you use the word "understanding" there, Mr. Finch, in regard to this general work that was done over the field? You said that you had an understanding?—A. Why, there was no definite understanding as to details as to the work, but it was for the work in a general way and for the good of my claim, as well as other claims. The whole field, I felt, had to be prospected and developed in order to make it attractive and make it large enough to justify the enormous expenditure of money which would finally be necessary to make it available, and I never questioned the expenditures that Mr. Cunningham made for general work on trail building and cabins and surveying and all of that, feeling that he understood

his business very well, and I had the most implicit confidence in his integrity.

Q. I believe you said, Mr. Finch, I am not clear on it, that you had no such agreement as that indicated to you by Mr. Sheridan on what he termed was page 1 of that so-called Cunningham journal?—

A. What was the question?

Q. I believe you stated that you had no such an agreement as that which is indicated on what Mr. Sheridan called page 1 of the so-called Cunningham journal [indicating], Government Exhibit 3?—

A. No; I never heard of such an agreement nor did I know anything about the journal.

Q. I call your attention also, which says: "After this is done," reading as follows, "After this is done each subscriber agrees to deed his interest to the company for the purpose of developing and marketing the coal." Did you have any such agreement as that, Mr. Finch?—A. Never had any such agreement.

Mr. GRAY. That is all.

Recross-examination by Mr. SHERIDAN:

Q. Now, Mr. Finch, I understood you to say that there was no understanding, on your part at least, that anything that this committee did down at Salt Lake City in the conference with the Guggenheim interest would be binding?—A. Binding on all the entries?

Q. Binding on all the entries.—A. Yes.

Q. I now invite your attention to this statement in claimants' Exhibit 4: "All the parties present agree to ratify the action taken by the committee." What did you understand that that meant?—A. I can't remember what my understanding of that was at the time. I don't remember that, being a party of the transaction, because I can remember that two or three parties would not have subscribed to any such a motion as that because they openly demurred to the matter and expressed doubt about it, and by no means gave their complete assent.

Mr. SHERIDAN. That is all.

(Witness excused.)

WALLA WALLA W. BAKER, a witness produced on behalf of the claimants, being first duly sworn by the commissioner, testified as follows:

Direct examination by Mr. HUGHES:

Q. What is your residence, Mr. Baker?—A. Walla Walla.

Q. How long have you lived there?—A. I have lived there since 1862—1861.

Q. You were born there then, I take it?—A. No, sir; I was born in Portland.

Q. What is your age?—A. I was born in March, 1861.

Q. Mr. Baker, you are acquainted with Governor Moore?—A. Yes, sir.

Q. Did you ever meet Mr. Cunningham prior to or about the time of becoming interested as a party in this case, as a locator of a claim in the Controller Bay district, in Alaska?—A. Yes, sir.

Q. Where did you first meet Mr. Cunningham, and when?—A. I met Mr. Cunningham in the year of 1903, I think it was; along in the late spring or early summer.

Q. Did you know him or had you ever met him prior to that time?—A. No, sir; I had not.

Q. Did you learn about these coal fields from any other person prior to the time of meeting Mr. Cunningham?—A. Yes, sir.

Q. From whom?—A. From Governor Moore.

Q. Did you learn from Governor Moore that he had authorized Mr. Cunningham to locate a claim for him?—A. I understood so.

Q. Mr. Baker, what conversation did you have with Governor Moore in relation to this subject?—A. Well, I had been away from home, I think, to California, and on my return Governor Moore said to me that during my absence Mr. Cunningham had been there and interested him in some coal fields in Alaska; that he had inquired of friends concerning Mr. Cunningham and knew him to be a reliable sort of a man, and he believed from his statements with reference to these coal fields that an investment there would be a very good one, and if I desired to look into it when Mr. Cunningham came to Walla Walla again he would be glad to introduce me to him. I talked with him about the proposition. I can not remember exactly what the conversation was, but finally told him when Mr. Cunningham came to Walla Walla I would be glad to go over the matter with him and find out what there was in it.

Q. Well, in conversation with Governor Moore, did you learn that Mr. Cunningham was coming or was going to come there?—A. Yes, sir.

Q. Do you recall talking that matter over with Governor Moore shortly before Mr. Cunningham did come?—A. As I recall it, it was only a very short time, possibly two or three days. I think he had information to the effect that Mr. Cunningham was coming and would be there in a few days.

Q. Now, in the meantime, after talking with Governor Moore, did you give the matter any other consideration?—A. Yes; I thought the matter over, and I was trying to figure out how a claim in Alaska would be valuable, and it occurred to me that a claim there, worked by itself, would be of very little value unless it was a very good claim, and I approached my attorney upon the subject of whether a number of claimants could agree beforehand to combine the claims after they received patents, and he told me he had never looked up that question, but offhand his opinion was that they could not.

Q. Did you discuss that question with Governor Moore?—A. I don't know whether I did or not. I don't believe I did.

Q. Now, you may tell what conversation you had when you met Mr. Cunningham.—A. Well, Mr. Moore brought him into my office and introduced him to me, and I think Mr. Cunningham had with him some maps of this district.

Q. What sort of maps?—A. Well, I don't know whether they were tracings or blueprints; I could not say.

Q. You do not recall?—A. I rather think they were tracings on tracing paper, and, remembering the conversation I had with my attorney, I made up my mind if I took a claim in Alaska, in the way of a coal claim, it would have to be a very good one. I did not care to have one that had little or no value shown on it at that time. So I went over the matter very carefully with Mr. Cunningham with reference to where the best measures were shown on the surface, and after

his business very well, and I had the most implicit confidence in his integrity.

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Q. Where did you first meet Mr. Cunningham, and when?—A. I met Mr. Cunningham in the year of 1903, I think it was; along in the late spring or early summer.

Q. Did you know him or had you ever met him prior to that time?—A. No, sir; I had not.

Q. Did you learn about these coal fields from any other person prior to the time of meeting Mr. Cunningham?—A. Yes, sir.

Q. From whom?—A. From Governor Moore.

Q. Did you learn from Governor Moore that he had authorized Mr. Cunningham to locate a claim for him?—A. I understood so.

Q. Mr. Baker, what conversation did you have with Governor Moore in relation to this subject?—A. Well, I had been away from home, I think, to California, and on my return Governor Moore said to me that during my absence Mr. Cunningham had been there and interested him in some coal fields in Alaska; that he had inquired of friends concerning Mr. Cunningham and knew him to be a reliable sort of a man, and he believed from his statements with reference to these coal fields that an investment there would be a very good one, and if I desired to look into it when Mr. Cunningham came to Walla Walla again he would be glad to introduce me to him. I talked with him about the proposition. I can not remember exactly what the conversation was, but finally told him when Mr. Cunningham came to Walla Walla I would be glad to go over the matter with him and find out what there was in it.

Q. Well, in conversation with Governor Moore, did you learn that Mr. Cunningham was coming or was going to come there?—A. Yes, sir.

Q. Do you recall talking that matter over with Governor Moore shortly before Mr. Cunningham did come?—A. As I recall it, it was only a very short time, possibly two or three days. I think he had information to the effect that Mr. Cunningham was coming and would be there in a few days.

Q. Now, in the meantime, after talking with Governor Moore, did you give the matter any other consideration?—A. Yes; I thought the matter over, and I was trying to figure out how a claim in Alaska would be valuable, and it occurred to me that a claim there, worked by itself, would be of very little value unless it was a very good claim, and I approached my attorney upon the subject of whether a number of claimants could agree beforehand to combine the claims after they received patents, and he told me he had never looked up that question, but offhand his opinion was that they could not.

Q. Did you discuss that question with Governor Moore?—A. I don't know whether I did or not. I don't believe I did.

Q. Now, you may tell what conversation you had when you met Mr. Cunningham.—A. Well, Mr. Moore brought him into my office and introduced him to me, and I think Mr. Cunningham had with him some maps of this district.

Q. What sort of maps?—A. Well, I don't know whether they were tracings or blueprints; I could not say.

Q. You do not recall?—A. I rather think they were tracings on tracing paper, and, remembering the conversation I had with my attorney, I made up my mind if I took a claim in Alaska, in the way of a coal claim, it would have to be a very good one. I did not care to have one that had little or no value shown on it at that time. So I went over the matter very carefully with Mr. Cunningham with reference to where the best measures were shown on the surface, and after

discussing the matter very thoroughly and finding out and getting such information as I could concerning it, why, I told him I would take a claim there, providing I should have a certain one, but I don't remember the number of the claim; but he said that claim was taken, and I looked at the proposition and finally concluded I would take what was termed on the map as No. 8, and he said I could have that one, and afterwards I got a receipt from him to the effect that when I sent the money that I would be located on that claim.

Q. Now, was anything said about how much you would advance at that time?—A. Yes; I asked him what he thought the claim would cost to get it to final patent, and he told me he thought it would probably cost me in the neighborhood of \$3,000.

Q. Anything said about how much you would have to pay at the beginning?—A. Yes; I paid him \$600, or shortly afterwards paid him \$600—paid his draft on me for \$600.

Q. Was anything said about paying off the parties who had located or squatted on this claim?—A. Yes; he mentioned that fact; that he would have to pay them off.

Q. Three hundred dollars apiece?—A. I don't remember the amount.

Q. Now, in this conversation was anything said that brought up the subject of your inquiries that you had made from your attorneys; brought up the question whether these claims could be jointly operated or held jointly?—A. I don't remember. I really think possibly mention was made of it. I might have said something about it, but I don't think it was discussed. My views, my main point there was to get just as good a claim as I could which was left, to take it.

Q. Was anything—if anything was said, was it by you or Mr. Cunningham?—A. I think I—well, in fact, I don't remember the discussion about that point. It may have been brought up. I don't remember the details of the transaction.

Q. Did you explain to Mr. Cunningham the reason why you wanted that claim or the claim like it that you picked out?—A. I don't know as I gave him the reason. Possibly I did.

Q. Well, in the course of that conversation was there any agreement between you, or anything said from which an understanding might arise between you and Mr. Cunningham, that if you were located on this claim you would carry it forward to patent for the purpose of turning it over to a corporation, or holding it in conjunction with others to be operated jointly, or with respect to holding it, or any other of the entrymen that he represented having any interest, directly or indirectly in your claim, or your having any interest directly or indirectly in theirs?—A. No, sir; there was nothing of that kind discussed whatever.

Q. Was there any such talk between you and Governor Moore?—A. No, sir; not that I remember of.

Q. Well, in the light of the inquiries you made of your attorneys, I will ask you whether or not there was ever an understanding of any kind between you and Governor Moore or any other entryman at that time, or subsequently, that anyone should be interested in your claim, or you interested in anyone else's claim, or that your claim should be held in common with any or all of the claims located by

Clarence Cunningham, or the other entrymen defendant in this case?—A. No, sir.

Q. Now, when did you next see Mr. Cunningham?—A. Well, I don't remember whether I saw him or not prior to the time that I saw him at the Hotel Spokane, in January, 1905. He may possibly have passed through Walla Walla and I may possibly have seen him there, but I do not recall whether I did or not.

Q. You do recall, however, meeting him in January, 1905?—A. Yes, sir.

Q. At the Spokane Hotel?—A. Yes, sir.

Q. What conversation did you have with him at that time?—A. At that time he introduced me to his brother, Doctor Cunningham. I think it was his brother, and made application for a loan on some land which I believed is located in Horse Heaven country.

Q. In this State?—A. Yes; in this State. That was the main topic of the conversation at that meeting. There was some reference made to the Alaska proposition. I asked him what development had been done, and what the result was, and what was shown up there, and he seemed to think everything had been going along as well as could be expected, and he told me that the claims showed up very favorably.

Q. Up to that time had Mr. Cunningham drawn on you from time to time for expense on account of the work that he was doing for you?—A. Yes, sir.

Q. In making these locations?—A. Yes, sir.

Q. Now, Mr. Baker, I show you a power of attorney taken from the government files in coal entry No. 22, of the government papers, pertaining to your entry, and I will ask you if you executed this power of attorney?—A. Yes, sir.

Q. Before a notary public named Mr. Jones?—A. Yes, sir.

Q. On the 21st day of October, 1904. I also show you your affidavit made on that day, being the power of attorney which you have just identified, and I will ask you if that is your signature?—A. Yes, sir.

Q. Acknowledged before the same notary public on the same day?—A. Yes, sir.

Q. In this affidavit, or in the power of attorney, I believe you describe yourself as a person claiming an entry under the provisions of an act of Congress approved April 28, 1904, and I will ask you whether you had seen a copy of that law prior to that time, or had any information as to it, except that general information that a layman has with respect to it?—A. I had not looked at the law, and never saw a copy of it.

Q. Did you consult any attorney with regard to it?—A. Only at the instance that I stated a while ago.

Q. That was prior?—A. Yes, sir.

Q. Now, I call your attention to the following language in this affidavit:

I further swear that I am now in the actual possession of the said coal land, through my agent and attorney in fact; I make entry for my own use and benefit, and not directly or indirectly for the use or benefit of any other party.

Was that statement true at that time?—A. Yes, sir.

Q. Were you under any agreement, or had you ever had any conversation with anyone, from which an understanding or inference might be drawn that in making this entry you would hold it, either to be transferred to some corporation organized or to be organized, or for the benefit of some association, or for the benefit of Mr. Cunningham, or of any or all of the entrymen represented in other locations by Mr. Cunningham, in whole or in part?—A. No, sir.

Q. Was there then, or had there been prior to that time, any understanding between you and anyone else that any other person should have any interest whatever in your claim?—A. No, sir.

Q. Other than yourself?—A. No, sir.

Q. Or was there any understanding between you and any other person that your claim should be held under any agreement, directly or indirectly, that it should be operated as a mine in conjunction with the claims of any other persons?—A. No.

Q. I call your attention, Mr. Baker, to a paper designated application for patent contained in the same files of cash entry No. 22 as being the part of the evidence in this case by stipulation, and I will ask you if that is your signature?—A. Yes, sir.

Q. You sign it there W. W. Baker?—A. Yes; that is my usual way of signing my name.

Q. You signed it on the 17th day of February, 1906?—A. Yes, sir.

Q. And in order to avoid asking any unnecessary questions, but to call attention to certain papers which exist in the record, I will ask you if the fact that you sign it W. W. Baker required you to explain or make subsequent affidavit explaining the fact that this signature was that of the same person who is named under which your claim was located?—A. Yes.

Q. The claim was located in your full name?—A. Yes, sir.

Q. By which you were christened as a child?—A. Yes, sir.

Q. That was Walla Walla Willie Baker?—A. Yes.

Q. In other words, your father in christening you had as little thought of the application of that name to you as a man as some people have had when they made affidavit of the significance of the term used?

(Witness made no audible answer.)

Mr. HUGHES. I merely call attention, Mr. Sheridan, to these matters so that if you desire to introduce these affidavits in the record you may do so, or if you desire any further explanation regarding them, they being in evidence.

Q. Now, Mr. Baker, I call your attention to this application made by you which reads in this place, after referring to Mr. Cunningham as your agent, "and through him I make the entry for my own use and benefit, and not directly or indirectly for the use and benefit of any other party." Was that statement true at the time you made it?—A. Yes; that is correct.

Q. At the time—had you had at that time, or at any time prior thereto, any understanding or agreement with Mr. Cunningham, or Governor Moore, or with any other entrymen defendants in this action, or with any other person?—A. No, sir; I have reference to this claim.

Mr. HUGHES. Permit me to finish my question.

Q. (Continuing.) Had you any understanding by which any person or association of persons should have any interest in your claim?—A. I did not.

Q. Or by which you were under any obligation, express or implied, to thereafter at any time transfer it to any corporation or to hold it for joint operation in conjunction with the claims of any other person or persons?—A. No, sir.

Q. Mr. Baker, when you received the application paper sent and forwarded to you for use by you, was your attention called to the fact that the claim was differently numbered in any way from that which you had selected?—A. Yes.

Q. What did you do in respect to that matter?—A. Well, I noticed my application called for some claim entirely different from what I had picked out, and I complained to Mr. Cunningham, stating those facts, that I desired him to put me back on the same claim I had originally been located upon, or as close as could be, under the resurvey. There was a resurvey made in the meantime.

Q. Mr. Baker, did you take any other steps to ascertain whether this new claim, which was located under the resurvey, or the new survey, covered substantially the same ground as your original claim; and if so, why did you take such steps?—A. Well, I had at that time—I had before me what was known as the Hawkins report, and in that was a map of the district, and from an inspection of it I readily saw from the courses of the claims drawn on it that this claim on which I remembered being located on was different from the one I had formerly, and I wrote the land office and asked them to place upon the map that I sent them the names of the locators of the different claims, and they returned it to me.

Q. You wanted to see on what name your claim was located?—A. Yes, sir.

Q. Whether there was any error?—A. Yes, sir.

Q. Did you find any?—A. I found I was located off in the eastern portion of the district, in a location entirely different from the one I was located on originally, according to my original agreement.

Q. And did you, at that time, complain to Mr. Cunningham?—A. Yes, sir.

Q. You were then given the—or located upon the claim which is described in this application as—A. No. 38, I think.

Q. Thirty-eight?—A. Yes, sir.

Q. And that came about by reason of the entryman who had located that claim dropping out and deeding his claim to you?

A. I don't know anything about the facts, except that Mr. Cunningham advised me he thought he could put me back approximately in the original district by getting a deed from some other party, which he afterwards advised me he did. I never saw the deed until yesterday.

Q. Yes; I found it among these papers, but I do not find it this morning. [Examining papers.] Here it is. The deed I referred to is a deed executed on the 6th day of February, 1906, by William H. Batting, and filed in the land office February 21, 1907, being one of the papers contained in the files of coal entry No. 22. Did you surrender and abandon the location which had been given to you by Mr. Cunningham, or that had been assigned to you in the resurvey,

to which you had objected?—A. I do not think there are any papers sent me with reference to this.

Q. You never made application for it?—A. No; I never did.

Q. And you never afterwards took any steps to acquire it or assert any right to it?—A. No, sir. I advised the land office I did not claim it. That was recently. They notified me it was in my name and I advised them I did not claim it and never did.

Q. Mr. Baker, did you receive from Mr. Love a blank form of affidavit to execute?—A. Yes, sir.

Q. In connection with this entry?—A. Yes, sir.

Q. Did you sign and forward that?—A. I did.

Mr. HUGHES. I do not find it among the papers in cash entry No. 22.

Mr. SHERIDAN. I also observed it was missing when I first received the jacket, and I think I made a memorandum on the list of papers.

Mr. HUGHES. It was mislaid in some way.

Q. Did you, Mr. Baker, make payment to the Government?—A. Yes, sir.

Q. Did you receive from the register and receiver a certificate of entry of the final receipt?—A. Yes, sir.

Q. I show you the duplicate contained in the files of coal entry No. 22, and I will ask you if you received the duplicates of each of these papers, of receiver's certificate from the receiver and certificate of entry from the register?—A. Yes, sir; I think so.

Q. How long prior to the date of these papers did you forward your money in payment of the government price for your coal entry?—A. Before I received these papers?

Q. Yes.—A. I do not know. I think it was possibly a month or two.

Q. In what manner did you forward your money, and to whom?—A. I sent a draft to the National Bank of Commerce instructing them what it was for and told them to follow the instructions of Mr. Cunningham with reference to the disposition of it.

Mr. SHERIDAN. The National Bank of Commerce in Seattle?

The WITNESS. Yes; the National Bank of Commerce in Seattle.

Q. Mr. Baker, at the time of sending your money to the Government and at the time of receiving final receipt and certificate, or at any time prior thereto, had you any understanding or agreement with your agent, Mr. Cunningham, or with any of the entrymen defendant in this action or proceeding, or with any other person or persons, that you were making this payment and securing patent to this coal claim for the purpose of turning it over to any corporation organized or to be organized?—A. No, sir.

Q. Or for the purpose of turning it over to any association of persons to be owned or to be operated by such association?—A. No, sir.

Q. Did you have any understanding or agreement with any other persons whomsoever that any person, association of persons, or corporation should then, or at any time thereafter, have any interest in that claim other than yourself?—A. I did not.

Q. According to the evidence in this proceedings it appears, from Claimants' Exhibit 3, that the meeting of certain of the defendant entrymen was held in the office of Finch & Campbell in this city, Spokane, Wash., on the 15th day of May, 1907. Were you present at that meeting?—A. No.

Q. Do you recall whether you received any notice of that meeting?—A. Well, I presume I did. I do not recall the facts.

Q. Did you authorize anyone to represent you at that meeting?—A. No, sir.

Q. I show you Claimants' Exhibit No. 3 and ask you if you can recall whether you received a copy of the proceedings of that meeting, a copy of this exhibit [handing paper to witness]?—A. I think so.

Q. Did you discuss with any other of the defendant entrymen, or anyone else, the question of the negotiations with Mr. Eccles or with the Guggenheims, or in any other respect, the leasing of your coal claim or the organization of a company in which each one should secure any stock?—A. I had some talk with Governor Moore before he went to Salt Lake.

Q. That was after the meeting in July, or before the meeting in July, to which I wish to call attention, but before doing so, I want to ask you if in pursuant of the following paragraph, I now quote from Claimants' Exhibit 3, "That the committee should secure deeds to the mining claims, and issue receipts therefor and take all necessary steps to complete the organization of the company ready for the transaction of business," you were requested to make a deed of your claim to the Union Trust Company, or any such deed or formal deed was sent to you for execution?—A. Yes, sir.

Q. Who sent it to you?—A. Well, I could not say. I believe it was sent by some attorney in Spokane.

Q. What did you do with it?—A. Well, I looked it over and threw it into the wastebasket.

Q. Now, I call your attention to Claimants' Exhibit 4, which purports to be a record of proceedings of the meeting held on the 16th day of July, 1907, in the city of Spokane, and ask you if you were present at that meeting?—A. No, sir; I was not.

Q. Did you authorize anyone to represent you at that meeting?—A. No, sir; I did not.

Q. Do you recall whether you received a copy of this exhibit 4?—A. I do not recall it. Very likely I did.

Q. By the record of this meeting it appears that Mr. Campbell and Mr. Cunningham and Ex-Governor Moore were appointed as a committee to go to Salt Lake for the purpose of conducting such negotiations with Mr. Eccles on the 20th day of July following that meeting. Your attention was in some way called to that fact, wasn't it?—A. Yes, sir.

Q. Whether by a copy of this or from information from Governor Moore or somebody else?—A. He told me he was going. I think I received it from him.

Q. Now, you have already stated you had some conversation with Governor Moore on that subject. I will ask you to state what that conversation was prior to the time when he went as a member of this committee to Salt Lake, giving as near as you can the substance of it.—A. Well, I think the result—the substance of that conversation was, as I stated to the governor, that I thought before going to approach anybody on this subject—in my mind I had not thoroughly considered at that time that we had a right to sell these claims, even if we had an opportunity. Further than that, I thought that the claims, under the present state of development, would not enable us

to secure a price that would warrant us in doing it. I did not think we could make a good bargain out of it. It did not appeal to me.

Q. Did you express to him what your position or view would be in respect to this claim?—A. Well, I could not say now that I made special mention of that, but I made it clear to him I did not think it wise to undertake it.

Q. Now, after he returned on the committee, did you receive a copy of the proposition that was made by the committee to Mr. Eccles? I show you, for the purpose of refreshing your memory, Government Exhibit 10, which is the paper to which my question refers.

(Witness examines paper.)

A. Well, I can't say that I received this, but I talked the matter over with the governor after he had returned and he told me the terms of the proposition they were considering, and that is all. Whether he had this, I don't know. I thought he had either this or some other memorandum with reference to it, setting out the terms, and after considering them I told him that they did not interest me at all; I did not think it would be wise to undertake it. Probably I received this, but I would not say, and I knew at that time what the terms of it were.

Q. Did you state to him, or to any other member of the committee, to any other of the entrymen, what your position would be with respect to your claim, as to whether you would consent to sell your claim or turn it over to a corporation for any such purpose?—A. I told him that it did not interest me. That meant the same thing.

Q. Did you learn from anyone subsequent to that time what was the fate of that proposition?—A. Oh, yes; I heard it had fallen through. I don't know who told me, but I heard that.

Q. Mr. Baker, were you at any time after that favored by any communication from one L. R. Glavis?—A. Yes; I had a letter from him.

Q. Did it contain a copy of the affidavit that was requested of you to sign and return?—A. It contained a copy of an affidavit made by Cunningham.

Q. What is it?—A. I say it contained a copy of an affidavit purporting to have been made by Cunningham and he wished me to verify the Cunningham affidavit, if I remember right.

Q. What did you do with respect to it?—A. I simply laid it to one side, and I did not execute it.

Q. Why not?—A. Well, there were some statements in there that were not true, according to my way of looking at it.

Q. Did you examine the affidavit carefully?—A. Yes, sir.

Mr. HUGHES. Take the witness.

Cross-examination by Mr. PUGH:

Q. You stated it was in 1903, did I understand you, Mr. Baker, that you became interested?—A. Yes, sir.

Q. In the Alaska coal fields?—A. Yes; in 1903.

Q. Was it in that year that you first secured a location?—A. I presume the location was made for me in that year, yes; that is the way I understood it.

Q. Do you know what kind of a location it was? That is, under what law it was made?—A. I could not say positively that I heard it. I don't believe I ever saw that location myself.

Q. Did you at that time know, or did you learn from Mr. Cunningham or any other person, that other persons were securing other locations in the same locality?—A. Yes, sir; I did.

Q. Were the names of those persons known to you or any of them?—A. I think, at the time he approached me on the subject, why, he told me that Mr. Finch and Mr. Campbell, and of course I knew Governor Moore had, because he introduced me to him; and possibly two or three or four others, but I do not recall the names of them.

Q. And did you, before making your location, have any conference or communication of any kind with any of these other persons other than with Governor Moore, as you have already testified to?—A. None other than him.

Q. None with anybody else?—A. No, sir.

Q. You have stated it was your opinion at that time that you did not care to make a location unless you secured a very desirable claim or unless you could work it in conjunction with some other claim, did you not?—A. I think I said that if from the advice I had received from my attorney, I had concluded that I would not care to locate a claim in that district unless I had a very good claim, because my attorney told me in that offhand opinion that it would not be legal to agree to combine with other claims.

Q. You state your first opinion was, if I remember it, that the claim if worked by itself would be of very little value?—A. A poor claim would not do me any good, but if I got a good claim it would not be so bad; but, anyhow, I thought that I would take a chance on that and I thought I had better get the best thing that I could.

Q. You thought if you got a very valuable claim you would be better off?—A. Well, yes; I thought that would be better.

Q. Well, then, did Mr. Cunningham make any representation to you concerning the intentions of these other people?—A. No, sir.

Q. To handle them together for the purpose of operation and development?—A. No, sir.

Q. And no representation concerning the future disposition to be made of the title which you might acquire?—A. No; never did.

Q. Did you know Mr. Cunningham represented those other persons who were making some locations?—A. Yes; he stated so.

Q. And you learned that from him?—A. Yes; I did.

Q. What did Mr. Cunningham represent to you concerning the compensation which he would be entitled to or would expect?—A. He said nothing whatever to me.

Q. Nothing whatever?—A. Nothing whatever.

Q. Did you have any understanding yourself or any idea of what you would probably be required to pay?—A. Why, I think the conclusion that I had from his conversation was this: That my claim would cost me approximately \$3,000 by the time it went to patent. I presumed that from what was said that would include the expense of whatever he might wish to charge for his services.

Q. Did Mr. Cunningham give you that information or make that suggestion to you that it would cost you \$3,000?—A. I asked him that. He said that it would cost \$3,000.

Q. That is the total cost to you?—A. Yes, sir.

Q. Did you ever afterwards learn what his compensation was, if anything?—A. Nothing definite in that respect. I saw, I think, on

some of his reports an account in which he said salary account, and I presumed his salary was in that, possibly with some others; I did not inquire into it.

Q. You don't know except as you have seen it in these accounts whether you paid him anything for his services?—A. I presume he has charged me with his services. I do not know positively. I never asked him.

Q. Now, you subsequently made a new or amended location under the law of 1904?—A. Yes, sir.

Q. And whatever agreement as to his compensation that existed with reference to prior locations still continued?—A. Well, it did not exist, as I said; but if it had it certainly continued, because there was nothing new about it. I do not recollect anything.

Q. Well, whatever understanding he had with respect to compensation with respect to the former location continued with respect to the second location?—A. Yes; I supposed that continued on, generally.

Q. You had no other or different understanding?—A. No, sir.

Q. Had you ever had any experience, Mr. Baker, in mines or mining investments?—A. Oh, I had taken, as people sometimes call, a flyer; yes, without any returns to myself.

Q. Did you then know of any usage or custom in mining districts or prevalent among miners?—A. No, sir; I don't.

Q. Wait until I finish. —fixing the compensation of attorneys in fact, or locators?—A. No, sir; I did not.

Q. Then you had absolutely no means of determining, or knowing, what Mr. Cunningham might expect to receive from you as the value of his services?

Mr. HUGHES. I think I will object to that for the reason that the question in substance has been propounded and fully answered.

Mr. PUGH. I ask these questions for the purpose of ascertaining what his purpose and idea was.

The COMMISSIONER. Answer the question.

A. Read the question.

(Question read.)

A. I had no means of knowing except in a general way; he gave me a general idea that the claim was costing me about \$3,000, and I presumed that he would take a portion of that for his services. I had no conversation whatever upon that subject with him.

Q. You had been engaged in business for some time, Mr. Baker?—A. Oh, yes.

Q. Involving considerable business transactions?—A. Yes, sir.

Q. Is it ever your practice to enter into this sort of knowledge of what your liability would be?—A. Well, business propositions are a little bit different things, and are governed by entirely different rules. But I thought I could trust Mr. Cunningham, since I had known him, and in the matter of salary I would have to pay him what was right—I would have to pay him reasonably well, and I knew that I had certain rights which if he undertook to overstep, probably I would be able to maintain.

Q. Now, you state up to the time you received that final receipt and certificate you had no conference or conversation or understanding of any kind with other locators concerning the future disposition or development of your property?—A. No, sir; I did not.

Q. In so far as you were concerned you did not, up to that time, have any definite plan or purpose in that respect?—A. No, sir.

Q. You were proposing to make an investment of a considerable magnitude in these lands, were you not, Mr. Maker?—A. As stated I thought it would cost me \$3,000.

Q. And you knew, I guess, that they were in a distant and remote region and difficult of access?—A. Yes, sir.

Q. And would require some means of transportation?—A. Yes, sir.

Q. The value of the land depended altogether upon the coal contents and upon the securing of those contents, didn't it?—A. Yes, sir; that is my understanding.

Q. Now, Mr. Cunningham made the location for you, and did he, from time to time, advise you in writing or otherwise concerning the progress of the development work?—A. I got reports from him; yes.

Q. The purpose for which he was making expenditures of the money you sent him?—A. I had reports from him.

Q. I am going to ask you to examine the paper which I now hand you, which is in evidence as Government Exhibit 5, and state whether or not you ever received that paper or a copy of it [witness handed paper]?—A. Yes; very likely I received it. I could not identify this particular paper, but I think I received all the reports that he made; very likely; but I do not remember this particular one.

Q. You do not remember whether you gave this paper, if you received it, any consideration?—A. Oh, yes; I read it carefully, and it is very likely I received it.

Q. I will read you this language from the second paragraph on the first page of that paper: "Our full development to date has proven very satisfactory. While not prepared to say there is no question about the permanency or character of our coal, I will state that, so far as known, its quality is superior to anything known on the Pacific coast." Did you, at the time you received the paper, notice the use of the possessive pronoun "our" in describing the properties and its contents?—A. Why, I noticed that was in the paper, but I can not say; I noticed that he used this in some of the papers, of course.

Q. I also read to you this language from the fifth paragraph from the same page: "Our development on Trout Creek this winter, where all our work is being concentrated, consists of four tunnels," etc. You can not recall whether you noticed that language in this paper?—A. I think the same answer would apply to that as that I made before. I got the paper; probably I saw it.

Q. Yes; you make the same answer to the same question as to other expressions in that same paper?—A. Yes, sir.

Q. With reference to the use of the pronoun "our" in there in each one?—A. Yes; I generally read those things over pretty carefully, and I probably saw it.

Q. I am going to ask you to examine the paper which I now hand you, which is in evidence as Government Exhibit 6, and ask you to state whether you ever received that paper or a copy of it [paper handed to witness].—A. I think so. I remember that I knew that they had selected a man to go to Alaska to investigate these claims, and tell them what the reasonable value of it was, and I think very likely this was a notice that I got.

Q. With reference to that paper, I wish to ask you whether your attention was drawn to the use of the plural possessive pronoun "ours" in speaking of the title to the property to the claims in this group?—A. I read the paper, and probably saw the use of the word referred to.

Q. I am going to read to you this paragraph from page 2 of that paper:

Mr. Hawkins finds four of our claims of little value for coal, so far as can be determined at the present time, but as they contain heavy timber, he recommends their being held for that purpose. And as I have located four other claims, taking the dip of all the coal measures, no one will be any the loser thereby.

I will ask you to state whether you noticed that particular statement.—A. Very likely I did, if I read the paper, and if I received it I read it.

Q. Do you remember about considering this?—A. No; I don't remember that I received the paper at all, but very likely I did. I do not recall it.

Q. Have you any recollection of what you thought at the time of the use of that expression or that statement?—A. I do not think I drew any conclusion, if I read the paper. Now, I might say I don't know whether I received that paper, but if I did, I probably heard it; but as to drawing any conclusions, I don't know that I drew any conclusions, and if I did, I do not remember them.

Q. You only own one claim, which you now hold?—A. Yes; that is all that I know of.

Q. And when he spoke of "four of our claims" did you know what claims he was referring to?—A. Well, if I read the paper, I did not; no.

Q. You never called Mr. Cunningham's attention to the use of this language?—A. No, sir; I did not.

Q. In this statement is a description of the property?—A. No, sir.

Q. Or criticise it in any way?—A. No, sir; I did not.

Q. I am going to ask you to look at these two papers which I now hand you, both being statements of account and having been marked "Government Exhibits 8 and 9," and ask you to state if you received copies of these papers [handing paper to witness].—A. I think I received that one [referring to Government Exhibit 8], and I remember this one [referring to Government Exhibit 9]. I likely did. I think he sent them all to me.

Q. These papers did indicate to you, Mr. Baker, that Mr. Cunningham was placing in one fund all the money he received?—A. Yes, sir.

Q. And making expenditures from a central fund for the common benefit of all the claimants?—A. I think so.

Q. In other words, what development work was being carried on there was joint and common?—A. I did not inquire particularly as to what work he was doing. I was leaving that whole matter to him, and I did. I had the understanding that he was spending more on some of these claims than he was on others, but where he was doing it or how much on each one, other than are set forth in the reports, I had no knowledge other than as set forth in the reports as I got them.

Q. You stated that Mr. Glavis transmitted to you and asked you to execute an affidavit concerning your claim?—A. Yes, sir.

Q. And any agreement you made concerning the disposition of your title, and you stated that you laid that affidavit aside after reading it and never executed it?—A. No; I never executed it to my knowledge.

Q. Your reason for that was it contained statements you could not give your consent to?—A. There were statements in there that I concluded were not true.

Q. Do you remember what those statements were?—A. Well, I have not looked at the affidavit, I don't think, in recent times, but I think the affidavit began, I remember, by saying I was acquainted with most of the other entrymen. Well, I knew at that time probably seven or eight of them, and some of them very little, simply met them; and it further stated that some statement with reference to the disposition of the claim, which statement was not true.

Q. Did you address any communication to Mr. Glavis indicating to him what your position was as to that affidavit?—A. No, sir; I think not. I don't believe I did.

Q. You knew that he was investigating the validity of your claim for the Government?—A. I don't know that I had my attention called to it before that time. Prior to that time I had no notice that Mr. Glavis was in the field.

Q. He transmitted that affidavit by letter?—A. I think so.

Q. That letter stated to you the purpose for which it was being secured?—A. Yes, sir.

Q. And you laid it aside and paid no response to that letter?—A. No; I didn't write him, I don't think.

(And thereupon the further hearing of this inquiry was adjourned till 2 o'clock p. m. of said day.)

DECEMBER 7, 1909—2.30 P. M.

INQUIRY RESUMED.

Appearances: Mr. William J. McGee, United States special commissioner; Mr. James M. Sheridan and Mr. William B. Pugh, counsel for the Government; Mr. E. C. Hughes and Mr. John P. Gray, counsel for the claimants.

W. W. BAKER on the stand.

Cross-examination (resumed) by Mr. SHERIDAN:

Q. Mr. Baker, I wish to invite your attention to power of attorney executed by you on the 21st day of October, 1904, which is part of the original entry papers already in evidence, by stipulation of counsel. I wish to ask you if you can recall from whom you received this power of attorney.—A. No, sir; I don't believe that I can remember who that came from.

Q. From the time of the location of your claim down to and including the final certificate, did you consult counsel in connection with this coal claim of yours?—A. From what time did you say? (Question read.)

Q. When you received your final receipt?—A. Yes, I think so.

Q. I believe you referred to having so done in your direct testimony, having consulted your attorney.—A. That was before I saw Mr. Cunningham.

Q. Well, now, who was this attorney to whom you referred?—A. I consulted the firm of Sharpsten—B. L. and V. S. Sharpsten.

Q. Of what city?—A. Walla Walla. I think the consultation I referred to in my direct testimony was, I think it was B. L., the old gentleman.

Q. Down to and including the time of final receipt did you consult any other attorney?—A. No, no other counsel.

Q. Mr. Baker, I now invite your attention to Government Exhibit 29, which contains the articles of incorporation of the Behring River Railroad, and ask you to state what you know, if anything, concerning this organization [hands witness paper].—A. I never seen them before. I don't know anything about it.

Q. Have you any interest in such an organization?—A. No, sir.

Q. Or have you had?—A. No, sir.

Q. I now hand you a paper purporting to be signed by you, and ask you to state what it is [hands witness paper].—A. This is a letter to H. K. Love, Juneau, Alaska, in which I referred to an affidavit that I had made, and I say in that that I had expended \$2,250, and I add that the amount should be \$3,850, provided it was proper to include in that the \$1,600 purchase price which I paid the Government; \$2,250 was the amount I expended over and above the \$1,600.

Q. This is your signature [hands witness paper]?—A. Yes.

Mr. SHERIDAN. I offer this letter in evidence as Government Exhibit No. 40.

(Paper admitted in evidence and marked "Government Exhibit No. 40.")

Q. I now hand you another paper purporting to be signed by you, and ask you to state what it is.—A. This is a letter to Mr. Love in which I am sending him an affidavit used in connection with coal claim No. 38. I have said in there, "That I have changed the wording somewhat from the form that you sent me. Trust you will find the same satisfactory." And I signed my name there.

Q. That is your signature [showing to witness]?—A. Yes.

Mr. SHERIDAN. I offer this letter in evidence as Government Exhibit No. 41.

(Paper admitted in evidence and marked "Government Exhibit No. 41.")

Q. I now hand you a paper purporting to be signed by you, and ask you to state what it is.

Mr. HUGHES. Pardon my interrupting, but wouldn't it be sufficient to ask him if it is his signature, and if he wrote it. He has been describing the wording of the contents, and that would be an unnecessary repetition.

Q. You may very briefly identify it.—A. This is the letter I wrote to Governor Moore at Washington when he was there in 1907, asking him to see that certain affidavits that were there were signed one way and mine signed the other way were corrected if there was error in the matter.

Mr. SHERIDAN. This refers to the question of identity which was already referred to, Mr. Hughes, to clear the matter up.

That is all.

Redirect examination by Mr. HUGHES:

Q. Mr. Baker, in this letter, Government Exhibit No. 41, dated April 29, 1907, addressed to Mr. Love, you say that you are sending affidavit to be used in connection with coal claim No. 38. I note that

the final receipt that you had with you, that you identified this morning as appears among the papers, was dated, as I recall, April 23.—A. Yes, sir.

Q. Can you state from your recollection when, with reference to writing this letter, the duplicate of that receipt reached you at Walla Walla?—A. I think I sent the affidavit to Mr. Love about two or three or four days subsequent to the time I received the receipt. I think that is the case; a very short time.

Mr. SHERIDAN. I now offer this letter of Mr. Baker to Miles C. Moore, dated December 21, 1907, in evidence as Government Exhibit No. 42.

(Paper admitted and marked "Government Exhibit No. 42.")

Mr. SHERIDAN. I think it would be well, Mr. Hughes, for the purpose of helping to clarify the earlier part of the transaction with this entry of Mr. Baker's, that certain papers which I now hand you, and which relate to Mr. Batting's relation with this claim, to be placed with the original record and to be considered as a part of them under the original stipulation.

Mr. HUGHES. I see no objection to that in view of the fact that there is a deed from him.

Mr. SHERIDAN. To simply clear up the original situation of this entry.

Mr. HUGHES. We agree that they may be placed with the original record in coal entry No. 38.

Mr. GRAY. And be considered as an exhibit.

The COMMISSIONER. So as to describe what papers it is to be used in connection with, so that in looking over the papers afterwards it will find its proper place.

Mr. SHERIDAN. Then I shall place them with coal entry No. 38 in their proper place.

Mr. HUGHES. The paper referred to being the affidavit and power of attorney from William H. Batting.

Q. Mr. Baker, you were asked on cross-examination whether you understood that transportation would be necessary in order to realize the value of the coal entries that you made, in the way of disposing of the coal, and I believe you answered that you did. Did you have any understanding yourself that you yourself, or you in conjunction with anybody else, would attempt to provide means of transportation from this coal field to the seaboard?—A. No, sir; I had this in view, that as the country developed, and if there was any value in these coal claims or they would prove themselves of sufficient value to warrant a railroad being built into the country, there would naturally come a time when some one would build a railroad, and I, as an entryman, would be able to take advantage of the opportunity that would be afforded me for mining coal.

Q. You were shown certain reports from Mr. Cunningham sent out to the entrymen in which expressions such as "we" and "our," referring to the work done or the claims or locations which had been made, and also referring to development, using the expression "our development," were used. I will ask you whether your attention was directed to the employment by Mr. Cunningham of the possessive pronoun there, and what inference, if any, you drew from the use of said term.

Mr. SHERIDAN. I wish to enter an objection at this point to the question for the reason that that very question has been propounded by counsel for the Government, and the witness has answered that he can not recall.

The COMMISSIONER. I think under the rules of evidence a witness on redirect examination can explain any answers that he has made on cross-examination.

Mr. SHERIDAN. I submit to the commissioner—

The COMMISSIONER. That is calling for an explanation of the answer that he has made on his cross-examination. I think it is proper and I overrule the objection.

Q. Answer the question.

(Question read.)

A. I thought in some of Cunningham's reports to me, I don't know which ones, that I noticed the use of those terms. They did not impress me as meaning necessarily that we were all to be jointly interested in those claims. I think this: That if I had been in Mr. Cunningham's place, and making a report to any one individual owner of a claim up there, I would have certainly have said "your claim," but if I was making it, as he did, a report, copies of it sent to every claim owner, why, I would certainly use the very language that he has used, and I think it was very natural that he should use that language.

Q. You have testified that you did not recall that your attention was specially directed to the use of these terms, but you also said that you thought you read them all over.—A. I think I read them.

Q. I will ask you if, in reading them over, you drew the inference from the reading of them that Mr. Cunningham meant to convey that anybody had any interest in your claim, or that you had any interest in any of the other or all of the other claims?—A. No; I did not get that idea at all from the reading of any of those documents that came into my possession.

Q. Now, in reading those, as you said you did, if such an inference had been drawn by you from the language employed, I will ask you if that circumstance is one that would have fixed itself in your memory?—A. I think so; very likely.

Q. Your attention was called to Government Exhibit No. 6 on your cross-examination, and among other things you were asked as to the following language in that report:

Mr. Hawkins finds four of our claims of but little value for coal, as far as can be determined at the present time, but, as they contain heavy timber, recommends their being held for that purpose, as I have located four other claims, taking dip of all the coal measures, and no one will be any the loser thereby.

I will ask you if in the reading of that language you drew the inference that Mr. Cunningham meant that you or any other entryman held his entry in common for all, or any of the other entrymen?—A. I don't know that—I don't really remember clearly that that question came up before my mind, but if it had I would certainly have thought it did not apply to my claim, because I did not understand that my claim had any timber on, and the word that he had made four other entries would seem to indicate to me that these other entries were made for these four men that had timber claims rather than coal claims. That is the way I would construe it, I think.

Q. You think you drew the inference from the statement, "no one will be any the loser thereby," that he was intending to convey the idea that all these claims were entered in common, or to be held in common?—A. No; I think the reverse is true.

Mr. SHERIDAN. Of course, I would be entering objections to all of these questions if I had not been overruled on the materiality of these points, in view of the answers the witness has made on direct examination.

The COMMISSIONER. I think it is just as well you have not made the objections.

Q. Mr. Baker, you were asked if you knew from your examination of the report that Mr. Cunningham was spending money, apparently moneys that were sent him by you and others, apparently as if from a common fund, in doing development work. I will ask you what inference, if any, you drew from the information to that effect, conveyed by these reports, in respect to such expenditures?—A. Well, I did not infer from that that we had a common interest there in those claims. I thought that Mr. Cunningham was going ahead after he developed up sufficient measures of the claim to satisfy the officials that these were coal claims, and that the further money was being used for the purpose of building roads and building houses, building trails, and I think in some reports he said something about boats and other necessary needs that were necessary to the development of that section of the country as a whole, and I realized that after the development of some kind—that until that had been done claims could not be of very great value. I was willing, under those circumstances, to contribute whatever portion might be necessary, out of my share, to pay for that development.

Q. You never made any protest?—A. No; I made no protest at all.

Mr. HUGHES. That is all.

Recross-examination by Mr. SHERIDAN:

Q. Just one question. Mr. Baker, I have here what is known amongst the entry papers already in evidence, under stipulation, as "Affidavit of agent as to character of mines," and I desire to read you a small part of it for the purpose of propounding a question in this connection. The improvements, as set out herein, are "Cuts and shafts on the coal near surface, trails leading to claim, and joint interest in several hundred feet of tunnel driven on the Tenino claim for the purpose of examining the commercial value of the coal measures at a cost of more than \$2,000 to said Baker." What, if any, understanding did you have as to the significance of those improvements?

Mr. HUGHES. Wait a moment. I object to that question as not proper cross-examination, based upon his affidavit which the witness did not make and which it has not been attempted to show by cross-examination or otherwise that he had any personal knowledge of, but which, according to the records in this case, it affirmatively appears that he did not have and could not have had personal knowledge of it. Therefore no basis for cross-examination or for the examination. Such a method of questioning, I think, is most improper and unfair to the witness.

The COMMISSIONER. I think you can take his answer to the question.

A. Please read the question.

(Question read.)

The Cunningham you mean? Personal understanding with Cunningham?

Q. Yes.—A. I had no understanding with him. I remember of making an affidavit in which it is set up that the nature of the improvements on this claim would be explained by an affidavit of Mr. Cunningham; possibly this refers to that.

Q. Did you ever have any conversation with Mr. Cunningham as to what should be set out in the affidavit as a sufficient improvement?—A. No, sir.

Mr. SHERIDAN. That is all.

(Witness excused.)

FRANCIS JENKINS, a witness produced on behalf of the claimants, being first duly sworn, testified as follows:

Direct examination by Mr. HUGHES:

Q. Give your full name.—A. Francis Jenkins.

Q. Where do you reside?—A. Moscow, Idaho.

Q. What is your present business, Mr. Jenkins?—A. For the last four years or more I have been bursar and registrar of the University of Idaho.

Q. Have you had any other business or business interests?—A. Why, the mining interest that I have been carrying on.

Q. Have you been engaged any period of your life in mining; if so, during what period, and to what extent? Speaking brief.—A. Practically all my life. I was born and raised in a mining camp. My father was a miner before.

Q. Just to what extent have you been engaged in mining? Briefly cover your experience by your answer.—A. In my—when a young man I mined in coal. Later on I moved west, and have mined in the metal mines. I worked in iron mines when a boy, and in coal also.

Q. For how long a time have you been engaged in mining metals, that is, under that part of the mining which is embraced under the general mining laws; such as gold, silver, lead, and so forth.—A. Since 1876.

Q. In what countries or districts?—A. First in South Dakota, a Territory then, known now as South Dakota. The Black Hills usually known; in 1884, January, I moved to the district known as the Coeur d'Alene mining country, and have interests there yet.

Q. Well, have you prospected as well as been engaged in opening and operating mines in the Coeur d'Alene country?—A. Yes; some.

Q. Have you, in British Columbia and throughout this portion of the Rocky Mountain range, the western slopes of the Rocky Mountain range?—A. Yes; I have prospected in British Columbia.

Q. Are you acquainted with Clarence Cunningham?—A. Yes.

Q. How long have you been acquainted with him?—A. Since 1884.

Q. And in what business had he been engaged? I refer now to the period prior to 1903, during your acquaintance with him and

knowledge of him.—A. My first acquaintance with Mr. Cunningham he was in the mercantile business. Afterwards he took up mining as an occupation.

Q. For how long have you known him as engaged in mining as an occupation?—A. Twenty years or more.

Q. Prior to 1903, where, that is, where was he engaged in mining operations; was he prospecting as well as mining?—A. Prospecting and operating mines.

Q. In what region?—A. The Coeur d'Alene country.

Q. Had you had any business experience with him prior to 1903; if so, what?—A. Yes, sir; I was interested with him in one group of claims only, in the Coeur d'Alene country.

Q. Any other business transactions with him prior to that?—A. Well, some money interests. That is, at one time he was short of money to pay some hired force he had on a mine and he drew on me to pay the men off, and I sent him a thousand dollars.

Q. How long before the winter or spring of 1903; this will become material after a while?—A. Well, somewhere about a year, possibly.

Q. Now, did you meet Clarence Cunningham after he had one or more trips to Alaska in the fall and winter of 1902 and 1903?—A. I did after he came down the second trip, if I remember right.

Q. When and where?—A. In a room at the Spokane Hotel.

Q. Anybody else present?—A. No; only he and I.

Q. And did you have a conversation with him relating to the matter of the location or entry of a coal claim for you in Alaska?—A. Yes, sir.

Q. Now, you may state what that conversation was.—A. He first described the prospects, the coal prospects that were in Alaska, that he had secured an option on from some squatters, and he stated that it was, in his opinion, that it would be a good investment for a dozen men to take a claim each. That in time, possibly, these men would realize something on their claim.

Q. Did he have any samples of the coal?—A. Yes; he had some coal that he had brought down with him.

Q. And had assays of it, too?—A. He had some analysis made of it, and the analysis showed the coal to be very good quality of coal. I liked the looks of the coal, and I was anxious to get in on one of the claims, and I so stated to Mr. Cunningham. Mr. Cunningham said, "That is all right. We will be glad to have you take one of the claims."

Q. Well, what was said about the question of expenses or compensating him and paying him, and so forth?—A. As I now recall it, we did talk some of the possible expense, and by having a dozen men—a dozen claims—it looked as though the expenses would be lightened for each one, and it being a new country—I had had a good deal of experience in pioneering, and knowing a raw country required a good deal of effort and a good deal of money before you could arrive at the point to develop any mineral or coal. We figured on this that twelve or more claims, he holding one of them, that the expense would not be very great among the rest. It afterwards developed that the field justified locating twenty or twenty-five and finally more.

Q. Mr. Jenkins, what, if any, arrangement was made between you in regard to the payment or mode of payment by you to him?—A. As I stated a while ago, he had a thousand dollars of my money—

Q. Did you have his note or any other promise or evidence of it?—A. No; I never had a note. We never gave one another notes on matters of that kind.

Q. Did you bring that matter up on this occasion, or did he, or was it mentioned at all?—A. He mentioned it.

Q. What did he say?—A. In fact, I asked him why he didn't draw on me if he wanted money. "Well," he says, "I have your money, and, since you want a claim, I will use it for that." I says, "All right." "I will now use \$500 of that," he says. I agreed to it, and "the other \$500 will be used as necessary," and I was perfectly willing that he should. I had perfect confidence in his judgment. Knew him to be perfectly honest, and I knew that, whatever expense he would be to, he would rather charge me less than to charge me more than he ought to.

Q. From this conversation with him did you understand that the expense would include such expenditures as he incurred for supplies and for men or for any compensation to himself?—A. Well, he drew on me after this sum of money was used up, and the drafts were honored, and I notice in his reports where he has charged for expenses. My money was in his hands, and he could use it to the best advantage he could.

Q. What I wanted to know was whether you understood at that time that he would go on and handle this work and make such reasonable charges as were fair for all expenses, including fair compensation to himself, or whether there was any other or different understanding?—A. There was no other understanding. He had a claim of his own. He was then in a position to take care of his own claim, and I had confidence in him that he would not charge only what was fair for his time and expenses.

Q. You received statements from him, did you, before he drew on you, before this \$1,000 was wholly exhausted?—A. Usually—

Q. What I am asking you is whether you recall whether you received any copies of statements he sent out prior to the time when he had exhausted the \$1,000 that he owed you and began to make drafts on you for payments?—A. I did.

Q. And after that was exhausted he made drafts on you, did he?—A. Yes.

Q. And you paid them?—A. Yes.

Q. Mr. Jenkins, did you see Mr. Cunningham again prior to October, 1904? Perhaps I can aid your recollection by calling your attention to power of attorney signed by you on the 17th of October, 1904. [Hands witness paper.] It was about a year and a half after you authorized him to locate you. What I wish to know is whether between the first meeting, which you have already accounted, and this date, the date of this power of attorney, October 17, 1904, you met Cunningham and had any conversation with him relative to the location of a coal claim for you in Alaska or in relation to any other of the work he was doing there?—A. Yes; I believe I met Mr. Cunningham on almost every trip that he made down from Alaska.

Q. What conversations did you have with him?—A. He would explain the character of the country, the character of the work that

had been carried on, such as buying supplies and taking them up to Alaska, building trails and shelter for the workmen, tools, and so on, to mine with.

Q. Now, Mr. Jenkins, in any conversation you had with Mr. Cunningham, beginning with the first one in the spring of 1903 and prior to the date of this power of attorney, on the 17th of October, 1904, was there anything said in respect to turning over your claim at any time in the future, either before or after patent, to any company or corporation?—A. No, sir.

Q. Or association?—A. No.

Q. Anything said about his having any interest in your claim?—A. No.

Q. Anything said in any of his conversations from which you understood that Mr. Cunningham or any person else would have or expected to have any interest whatever in the claim that you were locating?—A. No.

Q. This power of attorney, being one of the papers embraced in the government files, in entry No. 2, was executed by you; that is your signature [hands witness paper]?—A. Yes; that is mine.

Q. It was acknowledged on the same date before one F. D. Allen, a notary public?—A. In this city.

Q. In the city of Spokane, was it?—A. Yes.

Q. I call your attention also to the affidavit attached to this power of attorney purporting to have been executed by you; that is your signature, isn't it?

(Witness examines paper.)

A. Yes.

Q. And it is sworn to on the same day before the same notary public?—A. Yes.

Q. From whom did you receive these two papers?—A. From Clarence Cunningham.

Q. Do you recall whether you received them from him personally or whether they were sent to you by him?—A. Why, I can't recollect whether these particular papers were mailed to me, but my impression is now that I got them while here in Spokane.

Q. By mail or from Mr. Cunningham?—A. From Mr. Cunningham, if I remember right.

Q. I call your attention to the following statement contained in this affidavit:

I further swear that I am now in the actual possession of said coal lands through my agent and attorney in fact, and make entry for my own use and benefit and not directly or indirectly for the use and benefit of any other party.

Was that statement a correct and true statement when made?—A. It is.

Q. I put in the past tense.—A. It was.

Q. Now, did you have any conversation with Mr. Cunningham at the time it was delivered to you as you now recall?—A. No; I did not specifically, only this was one of the steps necessary to securing our claims.

Q. Do you recall whether you knew anything about, or had seen yourself, the new coal law referred to in these papers and in the affidavit?—A. Yes; I had read a copy of the law.

Q. At the time of executing these papers, had you had any conversation with Mr. Cunningham or any other of the persons for whom

he was locating coal claims in the same locality, with reference to the subject of combining your claim at any future time for the purpose of owning them by a single corporation or association, or for the purpose of jointly operating them in the mining of coal when you acquired them?—A. No.

Q. Did you have any understanding yourself from any conversation or any negotiations in any kind or any representations or statements made to you by any persons that anyone other than yourself would have any interest in this location of yours, this mining claim?—A. No.

Q. And did you know anything about the circumstances of one Hawkins being sent up there in the summer or fall of 1905, a coal engineer?—A. Yes.

Q. For the purpose of making an examination of this field. You did know something about it?—A. Yes.

Q. What did you know and how?—A. I met Mr. Cunningham at the Hotel Spokane at this time. We walked out together on the street, and we came into Finch & Campbell's office there, and we met Mr. Finch and Mr. Campbell and one or two others, a few, just a few of us—I have forgotten what entrymen—and the proposition came up on the coal and our claims in Alaska, and Mr. Cunningham again made a verbal report that the showings were getting better and justified to carry on the work. Some one made the proposition—I can't recall now who it was in this group of men of us that met in Finch & Campbell's—made the proposition that some one be employed to examine the field. I well remember Mr. Cunningham urging—

Q. Any reference to the kind of a person who was suggested?—A. Some one who had experience with coal fields. I well remember Mr. Cunningham urged that this be done, so as not to take his version of it entirely.

Q. Any suggestion made there as to Cunningham's experience in coal, or his knowledge of coal measures?—A. Well, we all knew that Mr. Cunningham's experience in coal was rather limited, and he acknowledged that himself.

Q. Did you not know that he had had no experience whatever in coal, except what he acquired up there in that field in this work?—A. Yes; I am quite sure he had none before that.

Q. Well, what further was said on the subject at that time?—A. It developed that Mr. Cunningham's advice to consult with Entryman Smith, of Seattle—Mr. Smith being a man having to do of coal, that he might know of some good reliable man that we could trust to send up in there, the expense of which was to be borne by those that proposed sending him up there; and, as I learned afterwards, Mr. Smith and Mr. Cunningham secured a man by the name of Hawkins. I never met Mr. Hawkins, and he went up there to Alaska and made examination.

Q. Did you get a copy of his report?—A. I did not. While I am conversant with the content of Mr. Hawkins's report, I did not get—in talking with Mr. Cunningham afterwards, he believed he had sent it, but I didn't get it.

Q. I show you now a paper from the files in entry No. 2, purporting to be signed by you and denominated application for patent. That is your signature is it [hands witness paper]?—A. It is.

Q. You swore to it at that time before this notary public?—A. Yes.

Q. McLean?—A. Yes.

Q. I call your attention to the following statement contained in this application: "I make entry for my own use and benefit and not directly or indirectly for the use and benefit of any other party." What was the facts at this time in respect to the correctness and truthfulness of that language?—A. That was the truth and it is now.

Q. Following the making of that application did you receive a letter from Special Agent Love inclosing an affidavit to you for execution, and in connection with that question I show you from the same files a paper purporting to be an affidavit signed by you [hands witness paper]. After examining that you may answer whether you received it or not from Mr. Love?

(Witness examines paper.)

A. I did receive, and that is my signature.

Q. You returned it to him?—A. I did.

Q. You swore to it at the time before the clerk of the court who signs it as the officer administering the oath?—A. I did.

Q. This affidavit was made on the 21st of December, 1906, according to its date, and contains the following language:

At no time prior to location or after such time or since has affiant entered into any agreement, express or implied, or pledged himself by promise or otherwise, express or implied, by which the title to said land or any part thereof or any interest therein is to pass to any other person or association whatsoever.

I ask you if that statement was literally true in every particular at the time it was made?—A. It was.

Q. I also quote from this affidavit the following language to wit:

That in event said claim goes to entry in the United States land office at Juneau, Alaska, and receiver's receipt for the purchase price issues, he will not be under any contract, obligation, or promise to sell or convey said tract to any person or persons or associations or to put same into any company or joint holding for any purpose or to otherwise dispose of same, but will be free in every way to hold said tract, to lease or sell it at any future time.

I will ask you if each of the statements I have just read to you are true in all particulars?—A. They are.

Q. And they were at the time?—A. They were; yes, sir.

Q. Following this affidavit did you make payment to the receiver of the land office at Juneau for your coal location; and if so, in what manner?—A. I sent the currency by express to the receiver at Juneau.

Q. For the amount of the purchase price?—A. for the amount, \$1,600.

Q. Did you receive a receipt, receiver's receipt, for the payment of your entry for the coal claim?—A. I did.

Q. Did you also receive a certificate of entry from the register?—A. I did.

Q. At the time you made the payment for your coal claim to the receiver of the land office at Juneau, and at the time of receiving your final receipt and certificate, if obtained, and at all times prior thereto, I will ask you to state what is the fact thereto, whether or not you had, or ever had, prior to the last date—that is, the receiving of the receipt from the receiver of the land office—any understanding

or claim with any person whomsoever that your coal claim at any time after final entry or patent be by you transferred by you to any corporation or association, or should be by you held in your own name for the benefit of any corporation or of any association of persons, or for the benefit of anyone or any one or more of the defendants in this proceeding?—A. No.

Q. Did you then or had you ever prior thereto had any conversation or communication, written or oral, with any person whomsoever, from which an understanding had existed upon your part, or upon which you understood or said or did anything implying it was your intention or expectation or purpose to hold this claim, when you secured title to it, for the benefit of any company, corporation, association, person, or persons, other than yourself?—A. No.

Q. For any purpose whatever?—A. No.

Q. Were you notified subsequent to that time of a meeting of persons at the office of Finch & Campbell, to be held on the 15th day of May, 1907, and if so, by whom?—A. I received a notice of a meeting to be held in Finch & Campbell's office from Mr. Cunningham, calling on myself, as one of the entrymen, if convenient, to appear there on that day.

Q. I asked you for the purpose of saving time, while you are a witness on the stand, before the commencement of your examination, to read over the paper which was in evidence known as Claimant's Exhibit 3, and I will ask you if you have read this paper which purports to contain a report of the proceedings or things which occurred at that meeting.—A. Yes; I read that paper.

Q. I will ask you to state if that paper substantially sets forth what occurred at that meeting.—A. Yes, nearly. That is, as near as I can recall.

Q. I call your attention to the following language in Claimant's Exhibit 3, to wit:

Thereupon upon motion of Mr. Sweeny, seconded by Mr. Finch, the chairman was authorized to appoint a committee of five, which should organize a corporation for the purpose of acquiring the coal claims owned by those present, and those of such other claim owners as might desire to join the corporation, the committee to secure deeds to mining claims and to issue receipts therefor, and to take all necessary steps to complete the organization of the company ready for the transaction of business.

I will ask you if you now recall that such action, in substance, was taken at that meeting?—A. There was some discussion before that motion was put that might throw some light on the motion.

Q. I would be glad to have you tell what you recall, if anything, that occurred at that meeting, Mr. Jenkins.—A. It was a question in my mind and others as to our rights in the premises, at this time, and it was suggested that this committee, among other things, should consult an attorney on the matter, and ascertain whether or not we were transgressing any law or violating any provision of law by taking such steps as that; and with that understanding the motion was made and carried and a committee appointed.

Q. Now, did you subsequently learn in any way whether the committee had consulted an attorney, and if so, whom?—A. Only from hearsay, that Mr. Wakefield had been consulted.

Q. Now, I will ask you another question suggested by your suggestion of hearsay. Did you receive any communication from Mr. Wakefield?—A. No, sir; I did not.

Q. Didn't you get a deed from him to sign?—A. Yes, I did.

Q. Well, that is what I refer to.—A. Yes.

Q. Now, shortly after this you received a deed from Wakefield?—A. Yes.

Q. To be executed by you and returned to the Union Trust Company, as trustee?—A. Yes, sir.

Q. Were you informed or did you understand at that time that the making of that deed was in pursuance to the action of this committee taken under the adoption of the resolution I have called attention to?—A. It certainly was; yes.

Q. Did you execute it and send it to Mr. Wakefield?—A. I did.

Q. Do you know what ever became of it?—A. Well, I am not quite sure whether I got it back or not. If I have not it is in the possession of Mr. Wakefield yet.

Q. Has any such corporation as was suggested in this resolution ever been organized?—A. No, sir.

Q. Now, I will ask you—before going upon the witness stand, in order to save time, I asked you to examine Claimant's Exhibit 4. You have done so, have you?

(Record of meeting of July 16, 1907, shown to witness.)

A. Yes, I have read it.

Q. Were you present at that meeting?—A. I was.

Q. What would you say—whether or not this record contains a substantial account of the proceedings had at that meeting?—A. My impression is that it does not express the sense of that meeting.

Q. In what respect, Mr. Jenkins?—A. Here is a motion authorizing or empowering the chair to appoint a committee to go to Salt Lake City to confer and negotiate on the best terms possible for all concerned. Had it ended there it would have expressed the sense of the meeting, as I understood it, and would have expressed my ideas, but it goes on, "After full discussion and at the suggestion of some person present the chair appointed such committee, Miles C. Moore, A. B. Campbell, and Clarence Cunningham."—

Q. Pardon me, but—A. (Continuing) "All of the persons present agree." Now, that is the part to which I object. Now, that is not in line with the sense of the meeting. "All of the members present agree to ratify any action taken by said committee." There was—this might be hearsay—an error on the secretary's part in writing that part. It was not my understanding and I believe if this article, these minutes, were read before the same gentlemen that met there that they would not be approved with that clause in it.

Q. Do you know whether there was ever a meeting held at which these proceedings were read or submitted for approval?—A. I think not. If there were I would not agree to attend a meeting and delegate any power to anyone to negotiate for my claim without my having a say in it.

Q. I show you now Government Exhibit 10, which is the paper which was prepared at Salt Lake as a result of the meeting between this committee, appointed on July 16, and the attorney, Judge Lindley, and Mr. Eccles. Did you ever receive a copy of that paper?—A. It seems to me I have read this before, but whether I received a copy of it I am not certain, but I am satisfied I have read this.

Q. Well, did you know at the time you saw this that it was the result of the conference between this committee and Mr. Eccles at Salt Lake?—A. Yes, sir.

Q. Did you express the opinion to any other entrymen, I mean of approval or disapproval, of this proposition?—A. I disapproved of it.

Q. And in what way did you make your disapproval known, if at all?—A. Why I can not recall, of—unless it might be to Mr. Cunningham, but I disapproved of it. I had no opportunity to make any disapproval to any of the entrymen after that.

Q. There was no meeting called?—A. There was no meeting called.

Q. Did you learn subsequently that this proposition had fallen through because of the lack of assent or willingness of the entrymen to enter into it?—A. That was my understanding of it.

Q. Did you ever agree to be bound by this instrument or carry it into execution by any act of yours?—A. I did not. As I tried to explain upon these minutes, the committee delegated was to get a proposition and not to submit one, and the proposition they got was to be placed before the various entrymen.

Mr. HUGHES. You may take the witness.

Cross-examination by Mr. PUGH:

Q. When did you become interested—when did your interests in the Alaska coal fields first originate?—A. When Mr. Cunningham came back from Alaska, I met him, I think it was in May, at the Hotel Spokane, in this city.

Mr. HUGHES. May, 1903, you mean?

A. 1903; yes.

Q. Then, did you make a location in 1903, or prior to the passage of the act of April 28, 1904?—A. Yes; I had a location in there before that.

Q. Did you understand that location was made in accordance with the general mining laws of the United States?—A. I am not quite clear on that point.

Q. Don't know under what law it was made?—A. No, sir. It is not quite clear to me.

Q. You did make a subsequent relocation of the same land under the act of 1904, didn't you?—A. Yes, sir.

Mr. HUGHES. Now, Mr. Pugh, I do not think that you mean that your question should be misleading; but, as a matter of fact, I think it appears throughout that the relocations were on the identical lands for each entryman, and I don't suppose that you mean to have the witness make an answer which is a misstatement.

Q. I was not quite through. But you made a relocation, then, of some lands under the act of 1904?—A. Yes.

Q. In the same locality?—A. Yes.

Q. Did you at any time know that other persons were, through Clarence Cunningham, making locations in the same locality?—A. I learned this at my first meeting with him.

Q. With Cunningham?—A. Yes; that is, that there were others locating there.

Q. Were the names of those persons then stated to you?—A. I think they were.

Q. Were you acquainted with them, or any of them?—A. Some of them.

Q. Did you at or about that time meet and confer with any of them concerning the formation of an association or the perfection of an understanding as to developing work and operation of the properties?—A. I did not.

Q. Did you have any understanding with them as to the future disposition of any title you and they might afterwards acquire?—A. No, sir.

Q. Mr. Cunningham told you he was acting for these other persons, did he?—A. He said there were enough for about a dozen claimants, and that he would enlist about that many men into this scheme of locating coal lands in Alaska.

Q. He would enlist them in the scheme of locating coal lands in Alaska?—A. Well, the word scheme might not be expressing the same idea, but the idea of locating a claim.

Q. Well, what methods, if any, did he express to you or did he ever propose to you for enlisting these other persons in these enterprises?—A. He said that squatters had made some discoveries up there, and it required the buying of their rights, which he had arranged for, to get the sum of money necessary to pay off the squatters and obtain their rights, which, I think—I was assessed \$500 on the first.

Q. Did you understand it would be necessary to buy the rights of all these so-called "squatters?"—A. I understand it was; yes. That he had taken options from them, and they were taken care of in that way.

Q. Did not make any representations to you concerning the developing or the acquiring or interesting a number of persons in a considerable area for the developing all together?—A. He did not.

Q. Did he then or at any subsequent time prior to the delivery to you of the final receipt make any representations to you concerning the advisability of combining with any of these other several locators for developing and associating the titles in a common owner?—A. No. The matter of developing had been gone into with Mr. Cunningham and I at various times. This being a raw country, and this being exploratory, it would be useless for me to undertake to build all the trails necessary at my own expense, or buy all the supplies which would be necessary, or build all the houses that would be necessary. It would be useless to expend all the money on my individual claim; that it was necessary to find continuity of the coal measures, and any money expended upon my neighbor's claim was developing my own, as it proved, whether or not the coal was superficial or whether it was a broken mass and lodged in there by some glacial action, or whether it was permanent.

Q. Now, when Cunningham made the original location there, under the general mining laws, in 1903, was anything said about what was to be paid him for his services, if anything?—A. He had the sum that I had advanced at his service.

Q. To appropriate it to the compensation of his services, if he so desired?—A. Yes; I knew he would only take what was right and fair.

Q. You did not have any more definite or better understanding of what he was to be paid than that?—A. No, sir; none other than that.

Q. You had been employed in mining enterprises for some years prior to your present employment?—A. I didn't catch that question.

Q. I say, you have been employed in mining enterprises and mining for a good many years, haven't you?—A. Yes.

Q. Were you then acquainted, or are you now acquainted, with any custom or usage prevalent in mining regions fixing or limiting the compensation that a locator would be entitled to, acting in behalf of some other person?—A. Yes; there are such customs.

Q. Please state what that custom is. A. When a prospector is engaged by sending him into the mountains to prospect, and when he stakes anything he usually gets by stipulation a certain share in whatever discoveries the prospectors may make.

Q. It requires a stipulation does it?—A. Almost invariably, it requires a stipulation.

Q. Now, in the absence of any stipulation, is there any custom fixing his compensation?—A. Well, in instances where there is no stipulation, and they disagree, the rights are adjudicated in court.

Q. And you know of no custom that would absolutely fix the amount of compensation?—A. I know of no fixed custom where any interest is given to a prospector only by stipulation.

Q. In the relocation made in 1904, the compensation to which Mr. Cunningham might be entitled to, with respect to that location, was the same as that to which he was entitled when he made the location of 1903, was it. You had no different understanding?—A. Give me that question please.

(Question read.)

A. I had no definite understanding with Mr. Cunningham when he made these locations.

Mr. SHERIDAN. Read the answer.

(Answer read.)

A. I don't like that answer; if I may qualify it.

Q. You wish to make a different statement?—A. The same understanding went on by my contributing to these expenses. There was no alteration in it.

Mr. HUGHES. I rather think that the reporter got his words wrong and that he said "different" instead of "definite." It seems hardly fair when the witness used the word "different" instead of the word "definite."

Q. You had this understanding, that the amount of Cunningham's compensation was undetermined and depended upon subsequent agreement?—A. Depending upon—

Q. Subsequent agreement?—A. Subsequent determination; why, no, I did not understand that there was any subsequent compensation in the matter at all. He was receiving—

Q. You did not understand my question, Mr. Jenkins—would you have us understand that Mr. Cunningham's right to compensation was determined, or at least the amount of his compensation was not determined at the time he made this location for you?—A. It was determined by himself, and was—

Q. At that time when he made the location?—A. And was collected out of each remittance made by me, and his reports show that his expenses and salary were charged—

Q. He took out what he wanted, in other words?

(Witness said nothing.)

Q. Mr. Cunningham, as you stated, at different times sent to you statements and reports concerning the development work he was

executing up there, and the money he was expending?—A. Yes, sir; by conversations and otherwise I was kept advised.

Q. I am going to ask you to examine the paper which I now hand you, and which has been admitted in evidence as Government Exhibit 5, and ask you to state if you were furnished with a copy of that particular report [handing witness paper who examines paper]?—A. Yes; I received a copy of that.

Q. Did you examine it at the time you received it?—A. I did.

Q. I will ask you, then, if your attention was in any way drawn to the language which I will now read to you from the second paragraph of the first page of that paper:

Our development work has proven very satisfactory, and while we are not prepared to say there is no question about the permanency of our coal, I will state, so far as known at present, the quality of our coal is superior to anything on the Pacific coast.

Did you note that statement?—A. I did.

Q. And this language of the fifth paragraph of the same page, "Our development on Trout Creek, where all our work this winter is being concentrated, consists of four tunnels"—that language, did you note it?—A. Yes, sir.

Q. And in the next, succeeding this language:

On Clear Creek we have about 200 feet of tunnels, with innumerable open cuts, and on Carbon Creek we have also done quite an amount of surface work.

Did you observe that language at that time?—A. I did.

Q. And you noticed that all through that paper, that when speaking of the work that was being carried on on the several claims, the possessive pronoun "we" or the possessive pronoun "ours" and the pronoun "we" were used altogether?—A. I did notice that. It, in my opinion, is quite natural in mining.

Q. Did you have any development on your claim on all three of these creeks named in the paper?—A. No; not in that sense. The proof of continuity of a coal claim, or any vein, it is only natural that you follow it on its strike, wherever it is exposed, and by drifts or tunnels on its dip. The development on any one of these claims, from a mining point of view, was developing my location.

Q. You noticed on that report, or from it, and from others which he might have made you, that all the moneys he was receiving were being placed in a common fund, to be expended for the common benefit of all the claims, did you not?—A. I had perfect confidence in Mr. Cunningham—

Q. That is not answering my question.

MR. HUGHES. Perhaps if you let him go on, perhaps you will have his answer.

Q. You noted that fact, did you?—A. Read the question.

(Question read.)

A. All expenditures of my money were made with my full approval.

Q. You still have not answered my question. I asked you, Did you notice upon that report, and from other reports and statements furnished to you, whether this money was being placed in a common fund and expended for the common benefit of all?—A. I have no knowledge and I have no means of knowing whether or not my money went on the same claim or on some other claim than on my location.

Q. Did you infer that fact from some of these reports?—A. No; I was satisfied that he was using my money, and using it wisely.

Q. You were satisfied?—A. Yes, sir.

Q. I will now hand you another paper which has been placed in evidence by the Government and has been marked "Government Exhibit No. 6," and I will ask you whether you received from Mr. Cunningham that paper or a copy of it [handing witness paper]?—A. Yes, sir; I did.

Q. I am going to read to you from the second paragraph on the first page of that paper the following language:

I am pleased to state that Mr. Hawkins made a most careful, and thorough, and painstaking examination of the entire field owned by us, as well as a cursory examination of the coal lands of the English company adjoining. His report is now being prepared, etc.

Do you remember of his quoting that language in his report?—A. Yes, sir.

Q. And this language in the third paragraph:

We also ran levels and made estimates on a magnificent water power that can be made to furnish about 3,000 horsepower with a very small outlay, requiring but 2½ miles of flume, with a dam about 200 feet long by 10 feet high.

Do you remember noting that statement?—A. Yes, sir.

Q. In the second following paragraph on page 2 I read this language:

We are thus brought to that portion of our ground lying between Trout and Clear creeks, where the measures are unbroken and developed sufficiently to show approximately 100,000,000 long tons above the tunnel level we have projected.

Did you observe that statement?—A. I did.

Q. And in the last paragraph on that page:

Mr. Hawkins finds four of our claims of but little value for coal, as far as can be determined at first, but as they contain heavy timber recommends their being held for that purpose, and as I have located four other claims taking the dip of all the coal measures no one will be any the loser thereby.

Did you observe that language?—A. Yes, sir; I did.

Q. And in the next succeeding paragraph:

You are already advised that we are holding considerable tracts of land for timber which we will require in large quantities, but there is no law in Alaska for acquiring title to timber land; consequently would consider it advisable to try to secure some cheap strip before beginning any very extensive operations.

You noted that also?—A. Yes, sir; I did.

Q. What was your understanding concerning Mr. Cunningham's use in these reports of the statements of Mr. Hawkins, "Mr. Hawkins finds four of our claims of but little value for coal?"—A. Evidently Mr. Hawkins reported that, or he would not have stated that there were four.

Q. That would be your construction of that, Mr. Jenkins?—A. Yes, sir.

Q. Did you have any interest in any other claim than your own that you know of?—A. I have none.

Q. "Four of our claims" don't refer to your claim alone, does it?—A. If it did, Mr. Cunningham had located another one for me, so that I would not be injured thereby.

Q. Did you understand from that statement that he held the four claims for timber value?—A. I have no explanation of that part of it alone.

Q. You did not understand that you had such lands as that?—
A. No.

Q. Did you devote any consideration to his recommendation that he makes in the first paragraph of page 3, "That we purchase some cheap script and cover all we can before beginning any very extensive operations," and locate some considerable tracts of land for the timber?—A. Mr. Cunningham being up in the mountain fastnesses for some time alone, and as he is naturally a man of very large ideas, the making of such propositions, or rather the stating of such statements as he does in some of these paragraphs, had no bearing whatever upon my mind. In some of these he outlined large plans which involved more money than I would be able to put up, even for my one thirty-third of them.

Q. You never considered yourself a party to those plans, then?—
A. I never considered myself a party to any plan involving other than the developing of my coal claim.

Q. I now hand you two papers which have been submitted in evidence, marked "Government Exhibits 8 and 9," for the purpose of asking you whether you have ever received those papers or copies of them at any time from Mr. Cunningham?—A. I received that.

Mr. GRAY. What do you refer to?

Mr. SHERIDAN. Government Exhibit 8.

A. I received a copy of Exhibit 9.

Q. Look at the first paper I showed you. They indicate the keeping of a common account for all of these claims, do they not?—A. Yes, sir; it shows expenditures and expenses.

Q. Each entryman is advised of the amount received from each and every other entryman, and for what purpose the aggregate fund has been expended?—A. Yes, sir; that is the idea.

Q. Did Clarence Cunningham, in any conversation he ever had with you after you made this location, advise you just what improvements had been made on your claim?—A. I do not recall that he has, other than exposing the coal upon my claim by pits and cuts. That is all.

Q. Did he write to you that you were paying for tunnels and other developments and prospect work on other claims?—A. He did not write it that way to me. I was satisfied if any part of the money I contributed was expended in improving the coal measures in any general use and benefit to my claim, and adding to the value of my own claim.

Q. So far as you know, then, the prospecting operations on your claim were confined to surface cuts and exposures; that is, what work there was?—A. I remember him stating that much to me.

Mr. PUGH. That is all.

Redirect examination by Mr. HUGHES:

Q. Mr. Jenkins, when you received these statements from Mr. Cunningham did you understand they were statements made out for you alone of these matters which were your own—that is to say, of your claim, of your account, or that it was a copy of one statement made for the purpose of being sent to every other entryman that he was locating for?—A. Was gotten out in the form of a circular, and each entryman received the same sort of a report unless it was miscarried by mail. Possibly some of mine were miscarried.

Q. Now, you say you observed in reading these reports that he was accustomed to use the word "we" and "ours," referring to the claims or work done?—A. Yes.

Q. What significance did you attach to that fact; just explain briefly?—A. In my opinion, the only natural, sensible way to report to the various entrymen was to use "we," "our," and "ourselves."

Q. Did you infer from the language used in these reports of Mr. Cunningham meant to convey the idea to you and the other entrymen that the holdings were in any sense a common holding?—A. No, sir; I did not.

Q. Did you infer from the statements of operation which have been called to your attention by counsel in cross-examination, that these expenditures for general improvements, for exploitation, for trail building, or for proving the formation or continuity of the coal measures, etc., was an improper expenditure of your money?—A. I never did.

Q. Why not?—A. I thought it was the correct method of determining it.

Q. In reference to any one of these reports that counsel has called to your attention, did you have any idea that he intended—in reference to the water-power plans mentioned in these reports, did you have any idea that he intended that you should use this money in the development of water power there?—A. No, sir; I think not.

Q. Or with reference to timber, did you ever consent to locate any timber or purchase any scrip?—A. No.

Q. Now, in respect to any of these matters that you observed in reports, what inference did you draw in respect to the meaning conveyed by the writer of them, Mr. Cunningham, in preparing them?—A. I could possibly very easily explain it by supposing that Mr. Cunningham and I were the only two locators in the field, and from time to time Mr. Cunningham would write me from Alaska, or some other point; when he desired to report he naturally would use the word "we." I would, if I was in charge of work for persons, use the words "ours," "we," or doing so and so. That means he and his men.

Q. When references were made to acquiring timber or surveys for railway, or any matters pertaining to the investigation of harbor, or matters pertaining to the railroad, or the general development, or references to claims generally I will ask you what you understood from it as to whether or not Mr. Cunningham was intending to convey to you and the others the understanding you would be expected to engage in and undertake to carry out any such measures as a joint undertaking to be carried out by any portion or all of the men who had any claims there?—A. I did not understand it for myself that that was the proposition.

Q. Did it seem to you unnatural or unusual from your knowledge of mining men and prospectors who spent months alone in the mountains that they should give expressions to such ideas as might come into their minds as to the possibilities of the future?—A. The tendency is, if a man is at all optimistic, to get dreamy and visionary and have extraordinary large ideas.

Mr. HUGHES. That is all.

Recross-examination by Mr. PUGH:

Q. I have just one question. You stated that Mr. Cunningham sent to each entryman a copy of each of the reports you received. Do you state that from your own knowledge or is that an inference of yours?—A. Not from knowledge; no. I learned that it was the practice of Mr. Cunningham to do that.

(And thereupon the further hearing of this inquiry was adjourned to 9.30 o'clock a. m., December 8, 1909.)

DECEMBER 8, 1909—9.30 A. M.

Appearances: Hon. William J. McGee, United States special commissioner; Mr. James M. Sheridan and Mr. William B. Pugh, counsel for the Government; Mr. E. C. Hughes and Mr. John P. Gray, counsel for the claimants.

FRANK A. MOORE, a witness produced on behalf of the claimants, being first duly sworn by the commissioner, testified as follows:

Direct examination by Mr. HUGHES:

Q. What is your age, Mr. Moore?—A. I beg your pardon.

Q. What is your age?—A. Thirty-five.

Q. What is your business?—A. Well, I am not actively engaged in business, but I own some real estate and bank stock of various sorts; the real estate is somewhat varied.

Q. Have you been engaged in any active business for the last few years?—A. The last three years?

Q. The last few years?—A. The last few years. No; not actively.

Q. That has been due on account of the condition of your health, has it?—A. Yes; chiefly.

Q. Now, Mr. Moore, are you a son of Governor Miles Moore?—A. I am.

Q. Did you have any conversation with Clarence Cunningham when he was in Walla Walla about the time your father authorized him to locate or take up a coal claim for him?—A. Will you just repeat that?

(Question read.)

A. I presume I did. He was a visitor there in Walla Walla on his way to and from Alaska, but I paid very little attention to it at that time.

Q. That was in 1903. During that year you had one very serious operation, did you not?—A. I have had two heavy operations, but I think it preceded 1903—the first. I don't remember the date.

Q. Do you remember whether your attention was ever called to it, and whether you ever considered and either consented or refused or declined to take any claim in 1903?—A. I think the matter came up, but I at that time declined to go in.

Q. Now, were you absent from there a considerable part of the time—during 1903 or 1904—on account of your own illness and the illness of your mother, who died in the latter part of 1904?—A. I was away with her practically a year. That was the principal reason that I took no interest in this matter.

Q. Mr. Moore, was your attention called to this matter in the winter of 1905?—A. No; it was not called to my attention in the winter of 1905; in the spring of 1905.

Q. Well, in the spring of 1905?—A. Yes.

Q. What occurred?—A. Well, I don't know how I got hold of the information, but I learned that possibly there was a chance to participate or acquire a claim, but I was not certain; and, as near as I can recall, Mr. Cunningham was in Seattle at that time, and I addressed him a letter. Now, whether I got my answer verbally or a written answer I don't remember, but it was to the effect that I could get a claim.

Q. Was there a power of attorney, an affidavit sent you to execute?—A. Yes.

Q. I show you from the government files that are by stipulation in evidence in this case and which are labeled "Coal entry No. 32, Frank A. Moore, survey No. 39," and ask you if the paper I now hand you is the power of attorney signed by you, and whether the signature, Frank A. Moore, is your signature [hands witness paper]?—A. That is the instrument, and that is my signature.

Q. It was acknowledged at that time before Mr. Gregory at Walla Walla?—A. It was.

Q. I also show you an affidavit, purporting to have been executed by you, and ask you if the signature, Frank A. Moore, is your signature?—A. It is.

Q. It was also sworn to on the same day before the same notary public?—A. That is correct.

Q. I call your attention to the following statement contained in this affidavit, to wit:

And make entry for my own use and benefit and not directly or indirectly for the use and benefit of any other party.

I will ask you to state whether the statement contained in that affidavit, which I have just read, was true at the time you made that affidavit?—A. It was.

Q. Did you have any conversation with Mr. Cunningham at or prior to that time, or with anyone else, by which you agreed or from which you understood that Mr. Cunningham was to have any interest of any kind, directly or indirectly, in the location you were making?—A. I had no conversation on that subject with him nor anyone else.

Q. Did you have in any way any understanding yourself with Mr. Cunningham or any other entrymen who, locating a claim through the agency of Mr. Cunningham, would have a common interest in your claim?—A. I had no such understanding.

Q. Did you have any understanding that at any future time you would be expected or required to turn over your coal claim to a corporation organized or to be organized, or to any association, or to hold it to be operated jointly with other entrymen in the mining of coal?—A. I didn't understand I would be required to do any of those things.

Q. Did you understand you would be expected to do this?—A. I did not.

Q. What sum, if any, did you pay Mr. Cunningham at the time of executing these papers and arranging with him to locate a claim for you?—A. I think, practically, \$1,600. I think that is correct.

Q. What is it?—A. \$1,600, I believe.

Q. That is your recollection of the exact amount?—A. Yes.

Q. That was paid him in money by draft or otherwise, was it?—A. It was paid by draft; sent to the National Bank of Commerce in Seattle; sent to his credit.

Q. I show you, now, from the same files, application for patent, and ask you if the signature, Frank A. Moore, subscribed thereto, is your signature [hands witness paper]?—A. That is my signature.

Q. It was sworn to by you on the 14th of February, 1906, before a notary public in Multnomah County, Oreg.?—A. It was.

Q. You happened to be in Portland at that time?—A. Yes, as near as I can remember; I was just on my way to California, and I happened to be there a week, and this instrument was sent to me, probably by my father.

Q. Did you sign and forward it to Mr. Cunningham?—A. I can't remember that. I either did that or returned it to Walla Walla and it was sent from there.

Q. In this sworn application I find the following language, among other things:

I make entry for my own use and benefit and not directly or indirectly for the use and benefit of any other party.

I ask you if that statement was a true statement at the time you made it?—A. Yes.

Mr. HUGHES. I am not calling the attention of this or other witnesses to minor papers, such as those relating to citizenship, etc., because I am not advised that the Government expects to have any verification of the papers in those particulars, there having been nothing suggested of the purpose, and for the sake of brevity I have not encumbered the record by any reference to them.

Q. After making your power of attorney, that you have identified, and the first affidavit, and before making application during the summer which intervened, you had another very serious operation, I believe—an abdominal operation?—A. That is right; yes, sir.

Q. I now show you a paper from the same files, purporting to be an affidavit, and ask you if the signature, Frank A. Moore, subscribed thereto is your signature [hands witness paper]?—A. It is.

Q. This was executed, according to its face, in the county of Los Angeles, State of California. Was that the fact?—A. It is.

Q. You were at that time staying in Los Angeles, Cal.?—A. Yes.

Q. It purports to have been executed on the 18th of April, 1907. Do you recall how this affidavit came into your possession for execution?—A. Well, it undoubtedly came through the mail.

Q. But whether it came from Mr. Cunningham or was forwarded to you from Walla Walla, can you recall?—A. I can not recall, for the simple reason that Mr. Cunningham did not always know where I was, and he quite often sent letters to Walla Walla and they were re-directed. Sometimes he knew where I was and sent them direct; so it makes that matter hazy in my mind.

Q. The reason, I may say, I am asking this, it seems to be the equivalent of the Love affidavit, although made later than any of them, I think, and is not quite—does not quite follow the terms of the Love affidavit. It is not quite like it in some other respects, and I wanted to know if the witness knew anything further in regard to

the paper. I call your attention to the following language from this affidavit:

Said location was made for his own use and benefit, and that he is not under contract or obligation and is not under agreement to convey said land, or any of the interests therein, by lease, deed, or otherwise to any person or persons or to any corporation or association whatever, and that if patent issue he will be free to make such disposition of this as he may deem proper.

Were those statements and each of them true at the time you executed this affidavit?—A. They were.

Q. Now, did you send to the receiver at Juneau the purchase price, payable to the Government, for securing patent to this claim?—A. Yes.

Q. Do you remember the amount sent?—A. \$1,600.

Q. I show you now the receiver's receipt, taken from the files of this case, and I ask you if you received a duplicate of this paper, which bears date October 25, 1907, being a receipt from Frank A. Moore for the sum of \$1,590.41?—A. Yes; I have a similar receipt.

Q. I show you also the certificate of the register, bearing the same date, signed by John W. Dudley, and I ask you if you received a duplicate of that?—A. No; I don't remember that instrument.

Q. At the time you paid the Government the purchase price of this coal claim and received these receipts, and at any time prior thereto, I will ask you to state, Mr. Moore, whether you were under any contract or agreement, or had any understanding with Clarence Cunningham or any other of the entrymen who are defendants in this proceeding, or any other persons or company or association, that anyone besides yourself had or should have thereafter any interest whatever in this coal claim or the title to it?—A. No.

Q. Did you have any understanding or agreement that you would transfer it at any time to any corporation or association or to any other person or persons?—A. I did not.

Q. Did you have any understanding or agreement under which you were to hold it for the purpose of joint mining and operating, in conjunction with any other persons?—A. I did not.

Q. Did you have any agreement or understanding with anybody by which your ownership, dominion, control, or power of disposition over this claim, or over the title to it, before or after patent issued, should be under direction or subject to the control of anyone but yourself?—A. No.

Q. Did you ever receive any notice of a meeting of any entrymen represented by Mr. Cunningham in their respective locations in Alaska, to be held at the office of Finch & Campbell on the 15th of May, 1907?—A. I did not.

Q. And did you have any notice afterwards of that meeting or of the proceedings of the meeting or receive any copy thereof?—A. I don't remember of even receiving a copy.

Q. You were then in Los Angeles, Cal.?—A. I was in Los Angeles.

Q. Did you have any knowledge of a meeting that was held in the office of Finch & Campbell on the 16th of July, 1907, at which meeting a committee was appointed to go to Salt Lake and take up certain negotiations with Mr. Eccles?—A. Am I allowed to ask a question?

Q. Certainly.—A. May I say when?

Q. Just read that question. I think I fixed the date there.

The COMMISSIONER. It gives the date in the question.

(Question read.)

A. Well, my question referring to when don't mean when was the meeting held. You asked me did I have knowledge. I asked when.

Q. Well, tell what knowledge, if any, you had and when you got it. That is what I want you to do. It don't mean simply that you are to say whether you had knowledge on that date, but whether you had knowledge at any time and when you acquired that knowledge.—

A. I was at Los Angeles at the time, and my father came down there in February, as I remember it, for a vacation.

Q. February, 1908?—A. 1907, as I remember it.

Q. Well, that would be several months before this meeting was held?—A. Well, it must have been 1908. There seems to be some discrepancy, but I was in Los Angeles when I first heard of the trip that he had made to Salt Lake to confer with Mr. Eccles, and at the time he told me about it, as I remember, and said it fell through.

Q. Well, was that in the winter time when you saw him in Los Angeles?—A. It was in February, as I remember it. But I won't say positively 1907 or 1908.

Q. Well, of course he could not have told you something in the winter of 1907 that occurred in the winter of 1908?—A. It must have been, I guess.

Q. But all I am trying to get at is as near the time as you can, with reference to the event he told you about. Not exactly, but as near the time or some approximation as to the time.—A. Well, as I remember it, it was three or four months subsequent to that meeting there.

Q. Was that the first intimation you had of there having been any such a meeting as that held or your father having been appointed on a committee, when negotiations were had with Mr. Eccles?—A. It was, unless it was in some letter he simply made mention of it. I don't remember positively.

Q. Were you requested by Mr. Cunningham or anyone else to make a deed to the Union Trust Company?—A. I was not.

Q. You never made any deed?—A. Never made any deed.

Mr. HUGHES. Take the witness.

Cross-examination by Mr. SHERIDAN:

Q. What kind of business did I understand you to say you had been interested in, Mr. Moore?—A. Well, I believe I made the statement that I was not actively engaged in business, but that I owned some real estate and some bank stock.

Q. How long have you owned this property?—A. Since my mother's death, some ten years ago.

Q. You have not at any time been actively engaged in business for yourself?—A. Well, that is a hard question to answer, just what you call actively engaged. I have from time to time taken care of my interests and then I would be away again.

Q. Well, now, say in 1903, were you actively engaged in any business at that time?—A. It is hard for me to say. I can't remember the year.

Q. As I understood your testimony you were indisposed during a part of that time through illness?—A. Yes.

Q. And subsequently in 1904 or 1905 you were also ill?—A. Did you say 1905?

Q. 1904 or 1905?—A. Yes; in June and July; in fact all summer I was quite ill.

Q. Of 1905?—A. Yes.

Q. Were you traveling pretty generally at such times?—A. Yes. In a period of two years and seven months I was away very close to two years of that time.

Q. What years were those, Mr. Moore?—A. It was during the period ranging from the early part of 1905 up to the time I received my final receipt, which, as I remember it, was 1907.

Q. Now, were you traveling for your health during 1903?—A. No; I was not. My mother was very ill at the time and I was away with her in California.

Q. How long were you absent in California, approximately?—A. Approximately a year.

Q. Were you absent during any part of 1904?—A. Yes; it was the winter, as I remember it, of 1903 and 1904; the following spring, winter, and summer.

Q. So, as a matter of fact, during most of the time of 1903, 1904, 1905, 1906, and 1907 you were away from home most of the time?—A. Most of the time.

Q. Now, give us in your own words, Mr. Moore, just in what way you became interested in this claim of yours in Alaska.—A. Well, Mr. Sheridan, the facts are not sharp in my mind by any means. I did not pay particularly any attention to the matter, so I don't want to state definitely, but I suppose the first time, as I stated, that I heard about this was when Mr. Cunningham brought the subject to my father's attention, which was, as I remember it, in 1903. Then, as I stated, I was away. The matter was almost out of my mind, and later on, why, the suggestion was made to me, probably by my father, that I better take a claim; that it was very good, and it had a good deal of influence on my mind, because I knew in general that my father was opposed to mining ventures, and if he had decided that this was favorable that it did not need my investigation; to take his word for it; just trust to his judgment; and so I wrote, as I stated, to inquire if I could get a claim, and I was told I could.

Q. You wrote to Clarence Cunningham?—A. Clarence Cunningham.

Q. Where was Mr. Cunningham at the time, as you recollect?—A. As I recall it he was in Seattle.

Q. That was in 19—A. 1905 or the latter part of 1904, but I think early in 1905.

Q. Now, you did not have any correspondence with Mr. Cunningham concerning this claim prior to this time when you wrote him that he might locate one for you?—A. Except this letter I just mentioned.

Q. Except the letter you mentioned?—A. That is all.

Q. You relied on your father's advice on the advisability of taking this claim?—A. Yes; that is it exactly.

Q. Now, about how frequently did Mr. Cunningham draw on you for money after you had directed him to locate this claim; that is, about how frequently in one year?—A. I never thought about averaging it up, Mr. Sheridan. I know I left instructions with the bank of which my father is president, the Baker Boyer Bank—the na-

tional bank—to honor his drafts, and have not since this matter I don't believe I averaged up those drafts to know, but I know they seemed to come along frequently enough.

Q. And do you have any idea of how much, approximately, you spent altogether on this claim from the time of this location down to and including the time of final certificate?—A. Well, it is just a little short of \$4,000, I think.

Q. Did you pay that much or have it paid out of your own personal funds?—A. Yes; distinctively.

Q. Now, give us generally what you recall, Mr. Moore, about the statements of account, if any, which you received from Clarence Cunningham from time to time.—A. Well, at the same time I would receive any communication from Mr. Cunningham father would receive a similar statement, and I suppose it made me more careless than though I had been absolutely alone in the world; and I did not give those the careful perusal that I would otherwise. They were quite often just scanned and thrown down, and not even carefully filed, and I can't say just what they did contain.

Q. Now, do you recollect whether or not Clarence Cunningham sent but a copy of each of those statements and one to your father, or simply one to your father, or simply one to your father for the use of both of you?—A. No; he always—my brother, Mr. Walter Moore, was also interested, and they were in triplicate.

Q. I now invite your attention, Mr. Moore, to a power of attorney in the original entry papers, now in evidence under stipulation, which power of attorney bears date March 27, 1903, and is signed by you. I will ask you to state, if you can recall, now that you have had some little time to possibly refresh your memory, from whom you received that power of attorney.—A. This is the first instrument, I believe [examining paper].

Q. As I understand it; yes.—A. No; I don't remember at all, Mr. Sheridan. I presume that came from Mr. Cunningham.

Q. I now call your attention to the papers amongst the original entry papers for your claim entry, on its brief, "Applicant's affidavit as to use and benefit," which is dated April 18, 1907, and executed before Caroline E. Smith, a notary public. This is the affidavit, as I understand it, which has taken the place among these papers of the ordinary Love affidavit, which has been so frequently referred to among the other entries of this group. I want to ask you now, Mr. Moore, if you can recall from whom it was that you received this affidavit?—A. Well, as I stated before, it would be very hard for me to remember that. I don't know whether that came from Mr. Cunningham direct or to our Walla Walla office. Not knowing that it was different than any other entrymen, it never came to my attention. Otherwise probably it would be.

Q. I observe that it was executed in the county of Los Angeles, State of California. Now would that in any way refresh your memory as to whether or not you had it prepared yourself in Los Angeles or whether it was sent to you?—A. I can answer that question. I would not attempt to draw that instrument up because I did not consider myself legally competent. I would not want to do that because it would bring up the question why I changed it, and so it was not changed. I can state that positively.

Q. Your best recollection is that it was sent to you for your signature?—A. Yes.

Q. Your claim is named the Syndicate claim, is it not, Mr. Moore?—A. I believe that is correct.

Q. Now, I invite your attention to what is known as the affidavit of agent as to character of mines, which is one of the papers amongst the original entry papers, and for the purpose of predicating a question I will read a small part of it:

The nature of said improvements is as follows: Open cuts to trace the veins or measures, and gradual trail leading through the claim, and joint ownership in a wagon road built from the warehouse on Stillwater River (4 miles), together with interest in boarding house, building, tools, and 2,000 feet of tunnels driven to prove and prospect the coal measures on adjoining ground on Trout Creek, amounting to \$2,300.

I wish to ask you, too, in connection with that quotation, if you had any conversation at any time with either your father, Governor Miles C. Moore, or with Clarence Cunningham with reference to what improvements should be made on your claim?—A. I remember of no such conversation. What is this [examining paper]?

Q. This statement is taken from a paper which is already described, bearing date January 2, 1907.

The COMMISSIONER. Who are these executed by?

Mr. SHERIDAN. Executed by John W. Dudley, register of the Juneau, Alaska—

Mr. HUGHES. Who was it executed by? It is only fair to the witness.

Mr. SHERIDAN. Clarence Cunningham, the agent for the entrymen.

A. No, that language has never come to my notice. I was away and I doubt if that was ever sent to me.

Q. Now, Mr. Moore, did you, at any time from the time of the location of your claim down to and including the date of final receipt, have any conversation with anybody concerning your plans with reference to this coal entry which you had taken up in Alaska?—A. No, I had not. Nothing definite. Well, sometimes Mr. Cunningham would be in Walla Walla on his way to or from Alaska, but I don't remember discussing plans. Sometimes the question came up of why we were being delayed on our patents, and, of course, we were speculating on that point.

Q. Did you have any conversation with your father, at the time you decided to locate this claim, on his advice as to what you proposed to do with this claim?—A. No, Mr. Sheridan, I didn't have any definite conversation, and by way of explanation perhaps I might say that I had not allowed myself to believe I had a coal claim until I got my patent.

Q. Was this merely an investment which you intended to allow to wait its time for development, or did you have any plans for the development of it at any time?—A. No; I had no plan. I knew in the first place that it was a remote region; a difficult harbor; I took it more as a future investment.

Mr. HUGHES. I suppose you mean an investment for the future, not a future investment, since you had already made the investment.—A. Yes; I stand corrected.

Q. What arrangement did you have with Clarence Cunningham, if any, as regards compensation for his services?—A. None what-

ever. No talk ever was exchanged either written or oral on that subject.

Q. Not either with Clarence Cunningham or your father or anybody else concerned with these claims?—A. No.

Q. I now call your attention, Mr. Moore, to a statement contained on page 1 on Government Exhibit No. 3, which purports to be a copy of what is known as the Cunningham journal, and I ask you to scan it and see if the journal therein contained, "concerning each subscriber giving one-eighth of his stock to Clarence Cunningham in consideration for his services in securing said land," was ever made with you?—A. That is the first time I ever laid eyes on such a statement.

Q. Did you ever have such an agreement?—A. Never did.

Q. Did you anticipate when you secured the services of Mr. Cunningham that he would render such services for nothing?—A. I supposed that he would have a salary, of course, but as far as having my claim encumbered by any one else's interest, I never dreamt of such a thing.

Q. Now, as you have stated, you had no definite agreement with him, however, concerning compensation?—A. No; nothing whatever.

Q. Were you at any time from the date of location down to and including the time of final certificate financially interested with any of the other entrymen in this group?—A. Yes.

Q. Name them.—A. Well, my father.

Q. Miles C. Moore?—A. Miles C. Moore, yes; and my brother, Walter B. Moore. I think that is all.

Q. Did you at the time of location become personally interested with any of the entrymen other than your father and brother?—A. Do you include Mr. Cunningham?

Q. Yes.—A. I knew Mr. Cunningham. I had Mr. Finch. I knew him quite well. Also Mr. Baker, W. W. Baker. Of course, my brother.

Q. I excluded your brother and your father.—A. You did. I don't remember whether I met Mr. Smith or not, but it seems to me my father introduced me; but he would not know me if he saw me to-day.

Q. On the occasion of meeting those entrymen named by you, other than your father and your brother, of course, was it a casual meeting or was it at some meeting held for the purpose of considering these claims?—A. Always incidental or casual.

Q. Did you on the occasion of such meetings go into any detailed conversation concerning your claim or their claims?—A. It could hardly be called a discussion. I remember I asked Mr. Cunningham once why my final receipt was so slow in coming. It was some seven months before it arrived, after I had made my payment. Some little matter—I should not say little matter, but some matter like that—but as to any discussion as to the future work, I did not have any discussion.

Q. Did you understand that the money which [the money] you were furnishing to Mr. Cunningham was to be used exclusively on your claim?—A. I came in some two years later than most of the other entrymen, and they had put up from time to time on their individual claims. I understood that there had to be certain work done in building trails and cabins, as enumerated many times.

Q. On your claim, individually?

Mr. HUGHES. Let him finish his answer.

A. No; I am speaking of what happened before I took mine. I realized that the same arrangement prevailing would apply in my case; that he was charging me at the same rate that he charged the other people. I was paying for these things he done, you might say. There were trails, and cabins, and warehouses, and various improvements that would have to have been done if I had owned this claim alone in Alaska, or if there had been a group, and so I shared pro rata in that exploration and development. In answering your question I assumed that the larger proportion of that would go on the claim itself; but there was certain expenses that must be carried out by the entrymen interested in that locality.

Q. I believe you stated you had paid what was your back pro rata for the improvements made jointly up there in the nature of trails, cabins, houses, etc., tunnels for prospecting purposes, and so on, at the time you came in and took a claim?—A. Yes, sir.

Mr. HUGHES. I would like to have that question read. I understood that the answer just given was an answer to the question. I would like to have it read.

The COMMISSIONER. Read the question.

(Question read.)

Mr. HUGHES. I merely wanted to call attention to the fact that the question is misleading and implies he made this payment before he paid the \$1,600, which certainly the witness did not intend to say and I don't think counsel intended to convey that impression. I simply did not want a false impression to appear in the record. If you will notice the reading of the question—that is why I asked to have it read—you will see that it implies prior to the time he came in; that is, at the time he paid the \$1,600; that he had already paid a portion of the expenses for trails and other like expenses previously incurred, and I don't think counsel intended to ask the witness and I don't think the witness intended to answer it affirmatively.

Mr. SHERIDAN. I merely wished to bring out how much money he paid for the improvement work already done on his claim prior to his coming into this group of entries and to distinguish that from the purchase price of the land.

Q. Now, how much money did you pay prior, apart from the purchase price of the land, Mr. Moore, for the improvements made jointly on this group and on your own entry?—A. About, as I remember it, \$2,100. I believe that the sum total came to \$3,800, including the purchase price.

Q. Have you any other interests in Alaska?—A. I have not.

Q. Have you ever been in Alaska?—A. No.

Q. Do you know anything about an organization known as the Behring River Railroad Company?—A. Well, I have just heard about it, that is all.

Q. Do you own any interest in it?—A. No; I do not.

Q. Did you ever attend any meetings concerning it?—A. No.

Q. I now hand you Government Exhibit 10 and ask you to state if you can recall that you ever received a copy of this instrument, and if you did, then to give us in your own words what you recall concerning the substance of that paper?—A. (Witness examines paper.) No. This is the first time I have ever seen this statement.

Q. Give us briefly in your own words what you knew about such negotiation with Mr. Eccles at Salt Lake City, if any?—A. Well, I of course have heard that referred to many times since this matter has come up.

Mr. HUGHES. Since what matter has come up?

A. This investigation, but it makes it some more familiar in my mind—and that is what makes it hard to go back and trace where I first heard of it, but as I remember it I was in California—in Los Angeles—when my father talked about it in a general way to me.

Q. In what year?—A. Well, I am not certain; but I will say about six months after this meeting, as I remember the meeting taking place in July, and I heard about this some time in February the same following year, and it was dropped because the matter had dropped and had ceased to be of interest, and there was not very much said about it.

Q. You never took part in any meetings leading up to these negotiations at Salt Lake City?—A. No; I did not.

Q. Did you ever have any correspondence with any of the entry-men concerning such negotiations?—A. I did not.

Q. Did you ever receive any notice from them to attend any meetings for this purpose?—A. Possibly; but I can't say positively that I did.

Q. Did you understand, Mr. Moore, at the time you took up your coal claim or at the time Mr. Cunningham located it for you, that you were getting a claim that had already been located before, and that buying somebody else's deed that you were getting an original unlocated tract?—A. The matter never came to my attention. I didn't think of that.

Q. Did you at any time between the date of location of your claim down to and including the time of final receipt, personally consult any counsel with reference to your coal claim?—A. I think not.

Mr. SHERIDAN. That is all.

Mr. HUGHES. That is all.

(Witness excused.)

FREDERICK BURBIDGE, a witness produced on behalf of the claimants, being first duly sworn, testified as follows:

Direct examination by Mr. GRAY:

Q. Will you just state your name, your residence, and your occupation.—A. Frederick Burbidge; residence, city of Spokane; occupation, mining engineer; assistant manager of the Federal Mining and Smelting Company, in the Coeur d'Alene country.

Q. Mr. Burbidge, how long have you been engaged in mining work? Just state generally your experience.—A. About twenty-five years, for the most part of it in Idaho; some experience in Montana, and a little in this State. I have been, all together, about sixteen years in the Coeur d'Alene country; and I have been connected with the operation of quite a number of mines there. I was for eight years the assistant manager of the Bunker Hill and Sullivan Company, and about five years the manager. I was the manager, and am still the manager, of the Frisco Mining Company. I stated before I am the assistant manager of the Federal Mining and Smelting Company. I am president of the Coeur d'Alene Development Company, and interested in a number of other mining ventures up there.

Q. In or during the course of your experience have you been engaged in the development work, the primary development of mines and mining claims, as well as the operation of producing mines?—A. Yes; I have taken them in the first stage and carried them clear through.

Q. Are you acquainted with Clarence Cunningham?—A. I am.

Q. How long have you known Mr. Cunningham?—A. Something over twenty years.

Q. And where?—A. I first met him in the Coeur d'Alene country. He was a resident in that country when I first went there, and I think I met him in 1888 the first time. That is the first year I went there. I have known him ever since.

Q. When did you first become interested in having a coal claim located for you by Mr. Cunningham in Alaska?—A. In the spring of 1903.

Q. I wish you would state in your own way the circumstances under which you became interested in having a claim located for you.—A. Well, at that time my office was in the Empire State Building, in this city, on the same floor as Finch & Campbell's office, and I was quite frequently in their office, and on one occasion when I was in there there were a number of samples of coal laid out on the table and there were several men there talking about coal, and I learned that this coal came from Alaska and that Clarence Cunningham had brought it down. I went into my own office, and shortly afterwards Mr. Campbell came in there and we spoke about the coal, and said if I would like to have one of these claims he thought I could get one. I said "How much would it cost?" He said he thought about \$3,000. "Well," I says, "I will think it over." And later in the day I went into his office and told him I would take one, and subsequently, I don't know how much later, a few days, perhaps, Mr. Cunningham came in to see me and remarked he understood from Mr. Campbell I was willing to take one of the coal claims in Alaska, and I told him "yes." And then, some time later than that, he drew on me for \$750, I think, the first payment I made him, and I paid the draft.

Q. In your discussion with Mr. Campbell, you say you understood it would cost \$3,000. What do you mean by that, Mr. Burbidge?—A. That the cost of Mr. Cunningham's services in the matter and the necessary work to develop the claim according to—that is, to comply with whatever the law required, and for the purchase of the land, would come to somewhere in the neighborhood of \$3,000; or, in other words, leaving out the purchase price, that the other part of it, the location and doing the work, etc., would cost somewhere about \$1,500.

Q. When Mr. Cunningham came in, did you have any further or other discussion then with him than what you have already detailed?—A. I do not recall anything of any moment which impressed itself upon my memory.

Q. At that time did you enter into any contract, agreement, or understanding with Mr. Cunningham of any kind?—A. I did not; neither then or at any other time.

Q. Did you discuss with him the question of how your claim should be developed, or whether it should be joined or consolidated with other claims?—A. No; there was no discussion of that kind.

Q. Subsequent to that time, did you see Mr. Cunningham at any time?—A. Yes, I saw Mr. Cunningham frequently. I should imagine I saw him pretty near every time he came down there from Alaska.

Q. Do you recall, Mr. Burbidge, the execution of your power of attorney to Mr. Cunningham? I call your attention to the power of attorney executed by you before W. A. Corey, on the 20th day of October, 1904, from the application papers of coal entry No. 23.—A. Yes; I remember this paper. The parts which are filled in in ink were written in by me, and it is signed by me.

Q. I also call your attention to an affidavit executed on the same date, the 20th day of October, 1904, attached to the power of attorney, and executed before W. A. Corey, a notary public.—A. I executed this.

Q. Going on, I call your attention, Mr. Burbidge, to the following language in this affidavit:

I further swear that I am now in the actual possession of said coal land, through my agent and attorney in fact; I make the entry for my own use and benefit, and not directly or indirectly for the use or benefit of any other party.

Is that statement true, and was it at the time you made it?—A. Yes; it is true and was.

Q. Had you, at that time, or at any other time prior thereto, made any contract or agreement with Clarence Cunningham or Mr. Campbell, or any other person, or did you have any understanding with any other person, by which you would convey or grant any interest in your coal claim to anyone but yourself, upon securing title from the Government?—A. I had no such agreement with any person whatsoever.

Q. Did you ever have any understanding, express or implied, at that time, or at any other time prior thereto, whereby part of your claim should inure, ultimately or at any time, to the benefit of any other person than yourself?—A. I did not.

Q. Did you have any understanding of any nature whatsoever that you should combine it with other claims for working or in the organization of a corporation or association?—A. I had no such agreement or understanding with anybody.

Q. Did you have any understanding in connection with your claim prior to that time other than that which you have explained and spoken of here in your testimony?—A. I did not.

Q. Upon seeing Mr. Cunningham after his return from Alaska, and subsequent to the payment by you of that \$750, did he ever report to you that he had located a coal claim for you in Alaska?—A. Yes, sir.

Q. I now call your attention to a paper which is included in the papers in coal entry No. 23, sworn to by you on the 30th day of January, 1906, before Louis Martin, a notary public—application for patent—and ask you if that is your signature and if you executed it?—A. That is my signature, and it is acknowledged by me before Mr. Martin.

Q. I now call your attention to the following language contained therein:

I am now in the actual possession of said land, through my duly authorized agent, Clarence Cunningham, of Kayak, Alaska, whom I have heretofore appointed as such for the purpose of making record, location, and entry of said coal lands for me and in my name, and I further swear that I make such entry for my own use and benefit, and not directly or indirectly for the use and benefit of any other party.

Was that statement true at the time it was made?—A. It was true.

Q. Had you at any time prior thereto had any contract or agreement or understanding of any kind in connection with that matter other than the original understanding that you made with Mr. Campbell, or had with Mr. Campbell at the time you told him you would take a claim?—A. None at all.

Q. Had you, either directly or indirectly, or expressly or by implication, agreed that you would join with any other claim or develop it for the purpose of mining it as a coal mine, or that you would consolidate it with any other claims adjoining or any claims in that district for any such purpose?—A. I had no such understanding.

Q. Was there any such agreement or any understanding that it would inure to the benefit of Clarence Cunningham at any time in the future or at the present time had?—A. No; I took it exclusively for my own benefit.

Q. And you so took it at that time?—A. Yes, sir.

Q. Did you ever make an affidavit at the request of a special agent by the name of Love?—A. I did.

Q. How did—what did you do with it?—A. I sent it to Mr. Love by mail.

Mr. GRAY. Mr. Sheridan, this don't appear to be in the entry papers in this entry.

Mr. SHERIDAN. I observed, Mr. Gray, that, also, that it was missing, which occurred in some of the instances when the papers were received from the Juneau land office.

Q. Did you make that affidavit in the form in which it had been prepared and forwarded to you?—A. Yes, sir; I did.

Q. You afterwards, Mr. Burbidge, paid the United States for this land?—A. I did.

Q. I now hand you final certificate of purchase and ask you if that is a duplicate of the one which you received?—A. It is.

Q. As near as you can recall?—A. Yes, sir.

Q. On the 23d day of April, 1907, it showed that it was issued by the land officers at Juneau?—A. Yes.

Q. Referring to that date, I will ask you if at that time, or if at any time prior thereto, you had any contract or agreement or understanding, express or implied, with Clarence Cunningham or any other entryman in that district, or with anyone else, whereby your claim or any interest in it should inure to the benefit of any person other than yourself?—A. I had not.

Q. Were you at that time, or had you been at any time prior thereto, under any obligation or promise whatsoever that you would, upon the securing of title thereto, convey it to any corporation then formed or thereafter to be formed, or to any association for that purpose, or for any other purpose whatsoever?—A. I was not.

Q. Had you any understanding or agreement, or were you under any promise or obligation, express or implied, by which you would consolidate or combine that claim with any other claim for the purpose of mining or joint use or ownership?—A. No; I had not and was not.

Q. At that time were you, or did you have the absolute dominion over that claim, without any limitation of any kind whatsoever?—A. Absolutely.

Q. Were you, as a matter of fact, free to dispose of that as you desired, either by sale, lease, or otherwise, free from any obligation, promise, or understanding with any person whatsoever?—A. I was.

Q. Mr. Burbidge, you say that you frequently saw Mr. Cunningham upon his return from trips to Alaska. Upon those occasions did you discuss with him the question of what he was doing in the way of making locations there and doing work to prove the coal measures?—A. Yes; we discussed it occasionally. Usually I would ask him how things were getting along, or something of that sort, and he would tell me that they were working and running tunnels here and there, and getting good results, and opening coal.

Q. Subsequent to the payment of the sum of \$750, which you have testified to that you paid, did you pay Mr. Cunningham any other sum or sums of money, and in what manner?—A. Yes; I paid him other sums; sometimes \$100 or \$200, according to whatever he drew on me.

Q. How were they paid?—A. I paid—he would always draw on me, and the drafts were presented for collection through banks here, and I paid them.

Q. How did you pay the Government for the land?—A. I went into the First National Bank at Wallace and told Mr. Johnson, the president of the bank, that I wanted a draft on Juneau or Seattle to pay for this land, and Mr. Johnson informed me that he was arranging, through the bank's correspondents in Seattle, to pay the money to the receiver at Juneau, and that he was arranging that for two or three of the other claimants who lived in Wallace, including himself, and he said if I cared to have him do it that way for me he would do so; and I authorized him to do so and to charge it to my account in the bank.

Q. Did you ever, during the time intervening between the date when you first paid Mr. Cunningham that \$750 and the date that you received your final receipt, have knowledge of the manner in which this money was being expended?—A. Only in a very general way. I received their statements occasionally from Mr. Cunningham, showing the expenditures which had been made for various purposes, surveying, prospecting, equipment, etc.

Q. How did you understand that the money was being expended?—A. Well, I naturally thought some of these expenditures were made in common, for the common benefit of all the claim owners in that section.

Q. What expenditures, for instance?—A. Well, expenditures, for instance, those that were of common benefit for all of the claims—the building of roads, trails, camps, and equipment, blacksmith shop, storehouse, the purchase of a boat to get supplies up the river to the landing nearest to the camp, and all of those things which could not have been done by any single claim owner, because they would amount to more than what any one claim was worth, and if the expense of that work and equipment had not been prorated by all of the claim owners it never would have been done at all. It could never have been done by any one claim owner, his interest was not worth it. Now, all the miners had to have cabins to live in, blacksmith shops to sharpen their tools, and so on, and if these thirty-three claim owners had to have thirty-three cabins and thirty-three blacksmith shops, that is too absurd to contemplate.

Q. You approved that method of expenditure for this common purpose?—A. I certainly did.

Q. It is a benefit to all?—A. Yes; it was the only feasible way to develop this territory.

Q. And did you feel that these expenditures were all for your benefit, Mr. Burbidge, as well as for the benefit of the others?—A. Yes; I participated, of course, in the common benefit.

Q. What understanding did you have, if any, as to any work being done upon your claim?—A. I understood that some pits and cuts were being made on my claim for the purpose of development of the coal outcrops and as much work as Mr. Cunningham, in his judgment, thought was necessary to show up the value of the claim and of the coal in it.

Q. It was for that purpose. Did you have any understanding as to any tunnel being driven at any place on this coal field or any knowledge of the fact?—A. I knew that some tunnels were being driven on one of these creeks—I have forgotten which, whether it is Carbon Creek or Trout Creek—and that they had developed considerable coal, and, while the work was not on my claim, I considered that my claim was benefited by the work, which is true in any mining district. Many a mine has been proven valuable by the work done on its neighbor's.

Q. For what reason did you deem that of benefit to you, that work upon some other claim, this tunnel work upon some other claim?—A. Because it proves the continuity of the coal measure and crosscuts the width or thickness of the bed of coal, and to that extent showed that apparently there was a good strong coal measure there and that necessarily indicated that it underlaid other claims, and in that way proved the value of mine, because it underlaid mine.

Q. Did you have any knowledge of the employment of a man by the name of Hawkins to examine this field; and if so, I wish you to state in your own way what knowledge you had, Mr. Burbidge.—A. I have forgotten just when that was, but after I had been interested in the location of this claim for some time and had paid some money and some of my friends had also got claims in there and had paid about the same amount of money, the question arose in our minds as to whether we were in a good thing or not; whether it was worth while to continue it, and it was suggested that we have the properties examined by some one who knew something about coal, as Mr. Cunningham had jokingly remarked to me on one or more occasions that all he knew about coal was that it was something black and it would burn, and we knew that he was not an experienced coal man; and in order to have some better idea of the value of the ground it was necessary to have some man who had knowledge, expert knowledge, of it; and so three or four of us were together on one occasion in Finch & Campbell's office when this matter was discussed, and Mr. Cunningham, who was present, urged that somebody be sent to make such an examination, and I believe that he suggested that Mr. C. J. Smith, of Seattle, who had been engaged in the coal-mining business, had an engineer who would be available to make such an examination, and it was agreed by those present on this occasion that we would ask Mr. Smith to arrange with Mr. Hawkins to go up to Alaska and examine this coal field as a whole and report to us as to its value.

and he did so and subsequently made the report, of which I received a copy.

Q. And what understanding did you have as to who paid Mr. Hawkins for his work?—A. Well, with the understanding that the report was for the benefit of all the claim owners in that district, it was expected that they would all contribute to the cost and, so far as I know, they all did. I know I contributed toward it.

Q. Did you have any other purpose or reason at that time than that you have stated in desiring to have a report from a coal engineer upon that field, Mr. Burbidge?—A. No, sir; that was the only reason, and I think a sufficient reason.

Q. You afterwards say you received a copy of that report?—A. Yes, sir.

Q. That was prior to the time when you paid the purchase price for the land?—A. Yes; it was one of the objects of getting the report to determine whether it was worth while to pay that purchase price.

Q. And had the report been adverse, what would you have done?—A. If the report had been adverse, that it was not a coal field of any merit, I should have dropped the enterprise at that time and saved the rest of my money.

Q. By a coal field of any merit, what do you mean by that?—A. Well, a coal field that could be worked at a profit. No mine is worth anything unless you can extract profit from it.

Q. That has been your experience?—A. Yes; I have had them both ways. [Laughter.]

Mr. SHERIDAN. We concede that, Mr. Gray.

Q. Mr. Hawkins, in a general way, refers in that report to the harbor at Controller Bay, and to certain soundings that he had made, or had had made, and a sort of a general information as to means of transportation from the ocean to this district, where the coal is situated; what does that refer to?—A. Well, that was one of the natural features of a mining report. As stated before, the question of profit is the essential feature in a mining proposition, and in order to determine the value of the coal land it was necessary to estimate what it would cost to market it, as well as what it would cost to mine it. By knowing those factors, and the probable price that can be obtained for the product, we could estimate the probable profit which could be made on the property.

Mr. SHERIDAN. I understand that this opinion which you have just expressed is the opinion which you drew when you first saw this report, or is that your opinion concerning the significance of that report at this time?

A. Why, both. I have not changed my opinion about it.

Mr. SHERIDAN. Those are the same views you had when you received the report and considered it for the first time?

A. Yes, sir.

(Examination resumed by Mr. Gray.)

Q. And at the time you contemplated sending an experienced man up there, was it your desire to have information concerning all of these matters yourself?—A. Yes, sir.

Q. In your judgment, the report would have been incomplete without it?—A. Decidedly so.

Q. Mr. Burbidge, subsequent to the receipt of final certificate of purchase, did you attend a meeting in Spokane of a number of

owners of coal claims in that district on or about the 15th day of May, 1907?—A. Yes, sir.

Q. I hand you Claimants' Exhibit No. 3, Mr. Burbidge, and ask you if you were present at that meeting?—A. I was; and I also acted as secretary of the meeting.

Q. The document which I now hand you is what?—A. Those are the minutes of proceedings of that meeting and were written by me.

Q. In what manner did you report the proceedings of that meeting?—A. Well, as this discussion of various matters progressed I would make a little memorandum of such things as stated the conclusions which were arrived at. Of course I am not a stenographer and could not report verbatim, but I put down a memorandum of each thing that seemed to be a conclusion, and at the conclusion of the meeting from those notes I wrote these minutes.

Q. Did you make more than one copy?—A. Yes; I believe I made a number of copies.

Q. Did you preserve any record, original record, of these proceedings in any record book?—A. No, sir; I just kept a copy of this, and that is the only record I have of it.

Mr. HUGHES. A copy of what?

A. A copy of this particular paper; I kept a copy.

Q. Claimants' Exhibit 3?—A. This, as I say, is the record of the minutes of that meeting; the only record of it.

Q. This is a correct record of the minutes of that meeting?—A. It is.

Q. And the conclusions which were reached?—A. Yes, sir.

Q. And that little memorandum that you made; did you preserve that?—A. No; I destroyed that.

Mr. GRAY. At the time we offered this in evidence an objection was made to it because it was not introduced upon the testimony of the man who made it. I again offer it in evidence in order to remove any such objection. As I stated to you, we would produce the man who made it in due time.

Mr. SHERIDAN. We accept it under the ruling.

Mr. GRAY. I introduce, then, these original minutes, being Claimants' Exhibit No. 3.

(Paper already admitted in evidence marked "Claimants' Exhibit No. 3.")

Q. I now call your attention to the following, which is reported in these minutes to have occurred:

Thereupon, upon motion of Mr. Sweeney, seconded by Mr. Finch, the chairman was authorized to appoint a committee of five who should organize a corporation for the purpose of acquiring the coal claims owned by those present, and those of such other claim owners as might desire to join the corporation, and to secure deeds to the mining claims and receipt therefor, and to take all necessary steps to complete the organization of the company ready for the transaction of business.

Did you take such action at that meeting?—A. Yes; I remember that that was done.

Q. State what the facts are as to whether or not at any time prior to that meeting you had ever had any understanding or agreement, express or implied, with any other coal entrymen in that district, or with anyone else, that you would join with them in the organization of a corporation to acquire your claim, or any other of these claims in that district.—A. I had not.

Q. State what the facts are as to whether or not, prior thereto, you had been under any promise, obligation, or understanding of any kind or nature whatsoever, to join or consolidate your claim with any other claim or any interest in your claim with any other interest, or organize a company for the purpose of mining coal and acquiring claims or otherwise.—A. I had no such agreement or understanding with any of these entrymen, or with anybody else, looking to the consolidation of my claim with anybody else's or to the formation of a company or do anything whatever with that claim other than to hold it myself.

Q. Prior to that time?—A. Prior to this time.

Q. And you were appointed, Mr. Burbidge, a member of that committee?—A. Yes, sir.

Q. As a member of that committee what did you do?—A. At that meeting I rather objected to serving on that committee, stating I was about to go to Europe and would not be able to serve, but notwithstanding my objection I was appointed on the committee; and after the adjournment of that meeting, I believe that, in company with Mr. Cunningham and Mr. R. K. Neil, I called at the office of Mr. Wakefield, but did not find him in, and so we left; and that is all that I did in that connection. The visit there was with the intention of taking action along the lines outlined in these minutes, and to have Mr. Wakefield's advice as to the proper steps to be taken to organize a corporation.

Q. I now call your attention to the fact that in these minutes reference is made to a proposition that Mr. Eccles had requested that a proposition be submitted to the Guggenheim Exploration Company along certain lines—their suggestion—and that it was after a general discussion the conclusions reached were, among others, that no proposition could be made to the exploration company at the present time.—A. Yes, sir.

Q. Subsequent to that meeting, where did you go, if any place?—A. About two weeks after the May meeting I left Spokane for a trip to Europe, and I returned here on the 11th of August.

Q. In the same year?—A. In the same year.

Q. What was the next information you had concerning any proposition to organize or to consolidate a claim, or any connection with these claims; what was the next information that came to you, of any kind?—A. Well, while I was in London I received a deed from Mr. Wakefield, which had been prepared pursuant to instructions received from some of the members of this committee, looking to the formation of a company to acquire the claims of these claimants who were represented at that meeting, as stated in the minutes. As I was intending to return to this country very shortly, I did not execute the deed at that time, but planned to execute it when I got back here; but when I returned I found that some further action had been taken by some of the claim owners, and that a tentative proposition or agreement had been made to Mr. Guggenheim, and, not approving of that agreement, I refused to sign the deed, and I never did sign it.

Q. You were not present, then, at a meeting held in this city on July 16, 1907?—A. No, I was not. At that time I was in London.

Q. Did you have any knowledge of that until after you returned from abroad?—A. I did not.

Q. Upon your return to the United States did you receive, or did you see, a copy of this tentative agreement with the Guggenheims, Government Exhibit 10?—A. Yes, I have seen a copy of this.

Q. Just state what, if any, action you took upon receiving a copy of that agreement—on being advised of the action which had been taken by some of the claim owners in that district during your absence.—A. Well, I thought it was a very poor business deal, and on that ground I was not willing to enter into it myself, and I did all I could with other entrymen with whom I was acquainted to induce them not to go into it. I first consulted an attorney to see if the action taken at this meeting of July 16 could bind me, and I was advised it could not, and I then started in on a campaign to break it up; that is, to break up this deal.

Q. That was in view of the action previously taken at the May meeting?—A. Yes, sir.

Q. Now, state what you did in pursuant to that, or as a part of that campaign, and what your objections to the agreement were.—A. Well, this proposed deal with the Guggenheims contemplated the payment of \$250,000 for a half interest in all of the 33 claims in that district; but the claim owners were not to receive the money, it was to go into further development of the property, and that made it tantamount to a valuation of only \$250,000 for the claims as they then stood, or about \$7,500 per claim. At this meeting in May Mr. Sweeney had said to me that he would give me \$15,000 apiece for ten claims, and that didn't look like good business to me, to sell for \$7,500, which I was not to get, anyhow, only have a paper value of \$7,500 for what I had been offered \$15,000 in cash for, and I pointed it out on that line to other claim owners and advised them not to consent to that plan.

Q. Did you discuss it with several?—A. Yes; I discussed it with several—Mr. Page, and Mr. O. D. Jones, and Mr. Henry Wick, of Youngstown.

Q. What did you learn was done with that tentative proposition, pursuant to the visit of these gentlemen to Salt Lake? Did it ever materialize?—A. It never materialized. I believe under that option or agreement, or whatever it might be called, Mr. Guggenheim had four months in which to signify whether or not he desired to exercise the option, and I believe that period expired without his signifying his intention to take it up, and so it expired and died a natural death.

Q. Did you ever authorize this committee or anyone else to enter into any negotiations with the Guggenheims for you?—A. No, sir; I did not.

Q. Concerning your claim?—A. No, sir; I did not. I was not in the country at the time the meeting was held, and the matter had never been presented to me prior to that time; and when I came back I found out what had been done with it.

Q. You say the matter had never been presented to you prior to that time. I call your attention to the fact that there was some discussion of the matter at the meeting.—A. Yes; but that was so promptly squelched that I hardly looked upon it as a presentation of the matter. There was nobody apparently in favor of that proposition at the May meeting, and I was very much surprised when I returned to this country in August to find that such action was taken as was taken at the July meeting.

Q. I now hand you Government Exhibit No. 6, and ask you if that is your signature to that affidavit.—A. Yes; that is my signature.

Q. Where did you receive that and from whom did you receive that affidavit?—A. It came to me in the mail from Mr. Glavis.

Q. What did you do with it?—A. I signed it and returned it to Mr. Glavis.

Q. I call your attention to the following language in the affidavit which was made by you:

We have understood among ourselves that when title was secured we would form a company and combine the entire group, since conditions are such that one claim could not be profitably mined, as anyone familiar with coal mining appreciates.

Was that true at the time you made that?—A. That is true. We had already at this May meeting, a year or so prior to this, made a sort of an effort to get together and organize a company for the purpose of acquiring the claims, but that had not been carried out.

Q. Had you had any understanding at any time prior to that with any other of the entrymen that when title would be secured you would form a company and combine the entire group, or any part thereof?—A. I had not.

Q. Or had you knowledge of any such agreement or such understanding upon the part of the other entrymen?—A. I had no such knowledge.

Q. I call your attention to the following language, which I will read from the affidavit of Clarence Cunningham:

I have read the foregoing affidavit of Clarence Cunningham, who was and now is my agent. I am well acquainted with most of the other coal land entrymen, for whom Clarence Cunningham is agent. I know of my own personal knowledge that the statements made in the foregoing affidavit are true in so far as they pertain to the Guggenheim syndicate and the understanding existing among ourselves as to the disposition of our claims.

And I call your attention to this language in Mr. Cunningham's affidavit:

We have had no written agreement whatever with any corporation, and the only understanding which we have had is that among ourselves. We have an understanding that when the patents have been secured we would form a company for the development of the coal field, but none of the claims were taken up for the benefit of a corporation, but merely with the idea when patents were secured we would combine our claims and work the coal field ourselves. We have always proceeded with this end in view, for anyone familiar with coal mining well knows it is impracticable to mine an individual claim of 160 acres, especially in Alaska, where expenses are so great.

And I ask you, in view of your answer to my former question, to explain what you mean when you said that the statements in Mr. Cunningham's affidavit were true, in reference to his statements, which I have read to you?—A. Well, in signing this affidavit my attention was concentrated on that part which I signed as relating to the Guggenheim deal, the proposed deal, and the agreement that we had in May. This does not specifically state an agreement in May, but it speaks of an agreement among the claim owners, and inasmuch as that is the only agreement I had ever had or attempted to have, I supposed that it referred to that, and I signed it, and I think that I was very much pleased to have the opportunity of going on record against the Guggenheim deal, and I rather jumped at the opportunity of signing this. I was not looking for any pitfalls in this thing, and

the fact that Mr. Cunningham had signed this affidavit himself allayed any suspicion that I might have, and I signed it, perhaps, without proper care, certainly so far as the statement goes that we had any agreement, or that I had had any agreement prior to this occasion on May 15, 1907; the statement is not true.

Q. And any inference that might be drawn that you had stated any such agreement had existed is not—was not according to your intention at that time and was not in accordance with the truth?—

A. It is not in accordance with the fact.

Q. Now, Mr. Burbidge, what did you do with your claim subsequent to 190—at any time subsequent to the matters which we have discussed?—A. I sold it.

Q. To whom?—A. To a Mr. Bennett. I sold to Mr. Horace V. Winchell, of Minneapolis.

Q. I will ask you what negotiations you had in connection with that matter in your own way. Just state what it was and what occurred at that time. When did you sell it?—A. I think I sold it in October, 1908. I had learned that Mr. Winchell had bought a claim in that section in Alaska and that he was willing to buy more, and I wrote him and asked him if he wanted to buy any further claims there, and I made him an offer on mine. He replied to me that the price I asked was too high; that the claim he had bought was very much lower. I wrote him again and lowered my price, and then he wired me, offering a little less than that, and I accepted it.

Q. How much did you sell it for?—A. I sold out for \$18,000.

Q. And what did you then do?—A. I made him a deed to my claim.

Q. And received from him?—A. The sum of \$18,000.

Q. Did you notify Mr. Cunningham of the action that you took after you sold it—did you notify Mr. Cunningham?—A. Well, before I sold it I wrote Mr. Cunningham, and also to Mr. Campbell. They had been the parties who were instrumental to my going into the venture at all, and as a matter of courtesy I wrote them and told them I wanted to sell my claim and gave them the opportunity if they chose to buy to do so; but neither of them did choose to buy, and I then wrote Mr. Winchell and the negotiations I have outlined were had and resulted, as I said before, in the sale of the claim for \$18,000.

Q. Did you notify Mr. Cunningham that you had sold it?—A. No.

Q. After you had sold it?—A. No, sir.

Q. Did you, after receiving that consideration, at any time pay any part of it to Mr. Cunningham or hold any part of it for Mr. Cunningham's benefit, or hold any part of it for him?—A. No, sir; I did not pay him any part of it, and I do not hold any part of it now for him. I do not owe Mr. Cunningham anything whatever.

Q. State whether or not Mr. Cunningham ever claimed anything of you on account of that deal?—A. He never has.

Mr. HUGHES. You may take the witness.

Cross-examination by Mr. PUGH:

Q. You first became interested in the Alaska coal fields in 1903?—

A. Yes, sir.

Q. And at that time you understood that the total cost, the total amount of your investment would be \$3,000, or about that sum?—

A. Approximately; yes.

Q. That would include Clarence Cunningham's compensation as attorney in fact?—A. Yes, sir.

Q. Now, you subsequently made a location under another law in the same locality, did you not?—A. I believe so.

Q. Was there any change in the understanding or agreement with Mr. Cunningham about his compensation as to that location?—A. No.

Q. Your liability to him, so far as you know, remained the same as it was with respect to the first location?—A. Yes.

Q. Did you ever give to Mr. Cunningham any power or authority to represent you that is not expressed in the power of attorney filed in the papers in respect to your claim?—A. No, sir; that is the only power of attorney I ever gave him.

Q. You never gave him any other authority, verbally or otherwise?—A. No, sir.

Q. And at the time that Mr. Cunningham interested you, as you have stated, did you know he was representing other persons in making locations of coal lands in the same locality?—A. Why, I knew some persons were interested there. I did not know how many.

Q. Did you know the names of any of those persons?—A. Well, the only ones I knew at that time, I think, were Mr. Finch and Mr. Campbell and Mr. R. K. Neill. I was not very much interested as to who else might be in it.

Q. Did you subsequently, or at any time before final receipt was delivered to you, become acquainted with any others of these locators?—A. You mean become acquainted with the fact that there were more of them?

Q. No; with the locators themselves?—A. Well, when I finally knew how many were in there and who they were I found that there were 12 or 15 of them, probably, who were known to me.

The COMMISSIONER. After you got your final receipt you mean?—A. Well, I knew prior to that who were interested—who had claims up there.

Q. Did you ever have any meeting or conference with these other locators prior to the date of your final receipt?—A. I did not catch that.

Mr. PUGH. Read the question.

(Question read.)

Q. The question is not complete. (Continuing.) In relation to the common development of your claim with others and the future disposition of the title that you or either of them might acquire?—A. I might have said to the different claim owners at different times—I don't just recall when or to whom, and I suppose they understood there was some common development, such as I have outlined in my direct examination just as I understood it. Whether they did or not I do not know. I did not ask them about it.

Q. Do you wish us to understand that you did not in any of these meetings with any of these persons have any conference or agreement with them respecting it?—A. There was certainly no agreement, but there were certainly financial statements made by Mr. Cunningham that came to me, and I presume to each of the other claim owners he represented, and they must have been able to draw the same inference I did, that there was some common development and common construction work going on, and we were paying for it out of the funds contributed by each of the claim owners.

Q. Did you at any time prior to the date on which you received your final certificate have any definite or fixed plan or purpose with respect to operating your coal property in conjunction with the other coal properties?—A. No, sir. I went into it essentially as a speculation as I would into any mining matter, trusting to the future development and to what luck might bring forth, etc.

Q. You understood the property was in a very remote region and difficult of access and its value was dependent altogether upon the procurement and marketing of the coal contents, did you?—A. Yes, sir.

Q. And yet you did not have with anybody any understanding or agreement that the property would be worked in common with any other properties?—A. That was not necessary. I felt pretty sure in my mind that if the property was good and had merits some one would develop it sometime and I would get some money out of it, and that was the prime object of going into it, to get some profits out of it.

Q. You have stated in your examination in chief that Mr. Hawkins's compensation for an expert examination of this property up there would be paid for by all of the entrymen. Now, in what manner did you acquire that understanding, and from whom?—A. Well, there was some five or six different persons present for whom Mr. Cunningham was agent, though he was not agent for all the claim owners up there, and inasmuch as the report was made for the information and benefit of all of them, I supposed he would charge them a pro rata amount, and I believe he did.

Q. It was supposition, apparently, then?—A. Yes; it was supposition. He had never so informed me.

Q. And you also stated in response to questions asked you on your direct examination that after you came back from England you interested yourself in an effort to defeat the consummation of the Guggenheim agreement?—A. Yes, sir.

Q. What purpose did you have in doing that?—A. I stated the reason; that I did not think it was a good proposition, and I do not want it to be understood that I did not think I had a right to do it. I would never have hesitated to go into the deal with Guggenheim if I thought it a profitable one.

Q. I am not asking about your right to refuse to enter into any of these agreements, but I am asking you what your purpose was in attempting to defeat the other entrymen's plans in which you had no interest?—A. Because I wanted to see a corporation formed along the lines planned at the May meeting.

Q. Along the lines planned at the May meeting?—A. Yes.

Q. You had no interest at that time in any acceptance of this proposition that had been contemplated before final receipt?—A. None whatever.

Q. How long did you have the so-called "Glavis affidavit" in your possession—the one shown to you this morning—before you executed it?—A. I don't know. If I knew the date of the Glavis letter sending it to me, and the date of my return, I can estimate it.

Q. Mr. Glavis's letter transmitted to you this affidavit?—A. Well, my letter—yes; referred to it.

Q. Your letter is dated April 23?—A. Yes; it refers to another date.

Q. I believe it does. I have your letter of the 16th instant, which sets forth?—A. Sixteenth to 23d. My letter was the 23d and his letter was the 16th and it was written at Portland. Well, that would allow it to have been in my possession five days, assuming that I was in town and here at the time, which probably was not the case. My business lies entirely out of the State and I come down here at the week end only.

Q. So you could not say definitely just how long you did have that paper in your possession and how long you considered it before you signed it?—A. I imagine I signed it as soon as I read it or as soon as I got it.

Q. You read it over, of course?—A. Why, I imagine I did.

Q. Did Mr. Glavis, in his letter of transmittal, make any reference to you concerning anything as to the meaning of the intendments and terms used in the affidavit?—A. I don't recall that he did.

Q. There are no words employed there that are not in common use and well-known significance, are there, Mr. Burbidge?—A. I think I am quite capable of understanding all the language in that affidavit.

Q. You did not find it necessary to consult with any other person, any attorney?—A. I did not.

Q. Concerning the effect of that affidavit if you signed it?—A. If it was necessary I neglected it.

MR. PUGH. I think that is all.

THE COMMISSIONER. Are there any further questions?

MR. GRAY. Yes, a few questions.

Redirect examination by Mr. GRAY:

Q. Mr. Burbidge, at any time, by writing or by one of these written reports or verbally, did Mr. Cunningham propose or suggest to you the construction of a railroad or the organization of a railroad company? If so, I wish you would give your explanations of what it was.—A. Yes; he did.

Q. What was that?—A. Well, he did speak to me about it and he said that there were a lot of people up there, two or three outfits building roads, and each trying to secure the available routes, and that he thought we might possibly find the Bering River coal fields bottled up and in the control of some transportation company which would be in position to put the screws on the mine operators when they did operate, if they ever did, and make onerous terms of transportation and practically force them to sell the coal at such terms as the railroad company might dictate; and in order to avoid that he thought we ought to get a railroad survey established, and he said he would like to organize a company for that purpose and have a survey made, and he said he would like to use my name as one of the incorporators and I said all right. And at some subsequent time I received a paper from him in connection with the formation of that company, which I signed and returned to him; and I think some time after that he informed me verbally I was elected a director in this railroad and I believe that is the last I ever heard of it.

Q. Did you yourself contemplate joining in the actual construction of a railroad up there?—A. No; I could never have built more than one yard.

(And thereupon the further hearing of this inquiry was adjourned till 2 o'clock p. m. of December 8, 1909.)

DECEMBER 8, 1909—2 P. M.

INQUIRY RESUMED.

Appearances: Hon. William J. McGee, United States special commissioner; Mr. James M. Sheridan and Mr. William B. Pugh, counsel for the Government; Mr. E. C. Hughes and Mr. John P. Gray, counsel for claimants.

FREDERICK BURBIDGE, on the stand.

Redirect examination (resumed) by Mr. GRAY: .

Q. I hand you Government Exhibit No. 5, Mr. Burbidge, and ask you if you ever received a report similar to that one, or a copy of it?—A. I believe I did.

Q. From Mr. Cunningham?—A. Yes, sir.

Q. I want to call your attention to the use of certain expressions by Mr. Cunningham, and ask you whether they came to your attention on receiving the paper. Ordinarily you are a careful man to examine papers that you receive and documents, are you?—A. Yes, sir.

Q. And letters?—A. I generally look at all such things.

Q. In this government exhibit I call your attention to the following language:

Our development to date has proven very satisfactory and, while not prepared to say there is no question about the permanency or character of our coal, I will state that so far as known at present the quality is superior to anything on the Pacific coast, while the quantity seems inexhaustible.

Again, in the same paper:

Our development on Trout Creek, where all our work this winter is being concentrated, consists of four tunnels.

And again:

We are awaiting instructions.

And again:

We are working but seven men, which number will be gradually increased.

I will ask you if the use of the plural pronoun "our" and the plural pronoun "we" came to your attention when receiving this statement, and if so, what impression, if any, it made upon your mind. [Hands witness paper.]—A. Well, I noticed the language at the time, but it seemed, in view of all the circumstances; that is, in view of the fact that Mr. Cunningham was sending this in the nature of a circular report or a circular letter to all the claim owners for whom he was the agent, that such language was natural. Possibly if Mr. Cunningham had have been a lawyer he would have said: "You and each of you," or something of that sort, but being a layman, he used what I consider natural language—ordinary colloquial English.

Q. Did it occur to you as the result of the use of those terms that you were in any way consenting to any joint ownership in your coal claim with other locators there, or that you were jointly interested in any other coal claim?—A. Most assuredly not.

Q. If that had occurred to you what would you have done?—A. I should have immediately protested against such language, if I had attached any such significance to it.

Q. I want to hand you Government Exhibit No. 6, and ask you if you ever received such a report from Mr. Cunningham. [Hands witness paper.] A. Yes; I believe I had a copy of this.

Q. Did you receive a copy of Mr. Hawkins's report, Government Exhibit No. 7?—A. Yes, sir; I did.

Q. Referring now to this Exhibit No. 6, Mr. Burbidge, I call your attention to the following language which appears there:

In addition to the above, his map will show contours and levels from our land to the ocean, with charts and soundings of the channels where we are likely to build coal bunkers and wharves, besides giving approximate route and length of proposed railroad, to both the lands owned by the English company and ourselves. We also ran levels and made estimates on a magnificent water power that can be made to furnish about 3,000 horsepower with a very small outlay, requiring about $2\frac{1}{2}$ miles of flume and a dam about 200 feet long by 10 feet high.

I will ask you if those things came to your attention at that time, and what, if any, consideration you gave to them?—A. As far as the contours and the line on which a possible railroad might be constructed, as I said this morning, I thought that those were natural things to appear in Mr. Hawkins's report. They should appear in any mine report as indicating the means of getting the product of the mine to market. So far as this suggestion about water power is concerned, I never attached any importance to that; looked upon it as rather a visionary suggestion. A water power in that country would be frozen up about half the year. It would be necessary to have an auxiliary steam plant in any case if anybody was using water power at all, and if they were to have a steam plant at the coal mine they might just as well run it twelve months in the year as not. They would have the cost of the coal, say, for six months, as against an investment locked up in the unused water power, and I think it would be very much cheaper and much more favorable for the operating person to rely entirely upon the steam. I do not know of any coal mine that is operated by water power.

Q. What about the bunker and wharves, and so forth?—A. That I took as a part of Mr. Hawkins's suggestion. I think Mr. Cunningham—this is merely quoting from that.

Q. Had you contemplated joining in the construction of any wharves?—A. Oh, no; Mr. Cunningham had no authority to make any plans of that sort, and I never gave it any consideration. Those things were largely the views of an impractical man. I know that Mr. Cunningham had had no practical experience in that business, and, in fact, I never regarded him as a practical operating man. He has always been regarded by me as a good prospector, energetic man, and a man capable of going around and mixing and getting onto things, and that sort of thing, but not as a practical operating man, and any suggestions of his as to the way of developing my claim would receive no consideration. I certainly had no idea whatever of ever making Mr. Cunningham the operating manager of my claim.

Q. Did you undertake to take any interest or understand that you had any interest at any time in a horsepower up there, or a water power?—A. No; I never had any such an understanding.

Q. Mr. Burbidge, I call your attention to this language in Mr. Cunningham's report:

Mr. Hawkins finds four of our claims of but little value for coal, as far as can be determined at the present, but, as they contain heavy timber, recommends their being held for that purpose, and as I have located four other claims, taking the dip of all the coal measures, no one will be any the loser thereby.

Did you pay any attention to that?—A. No; I was not advised that my claim was one of those that was considered worthless, and so the rest of it did not concern me.

Q. Did you understand that Mr. Cunningham was holding any timber land up there for you at all?—A. I did not.

Q. I am still quoting from this same exhibit:

You were already advised that we are holding a considerable tract of land for timber, which we will require in large quantities, but there is no law in Alaska acquiring title to timber lands; consequently, would consider it advisable to try to secure some cheap scrip and cover all we can before beginning any very extensive operation.

I wish you to state what impression you got from that, if you ever saw it.—A. Well, I never knew that Mr. Cunningham had taken up any timber lands and certainly I never knew, and do not know now, that he ever took any in my name. As far as I know, I am not interested in any timber land in Alaska or any place else. Mr. Cunningham did at one time speak to me of securing some timber land by placing scrip upon it and asked me if I would put up, I think, \$500 to get some of such scrip, and I declined to do so.

Q. Did you ever consent to interest yourself with Mr. Cunningham or with any other entryman in any timber lands in Alaska?—A. I did not.

Q. Did you ever authorize Mr. Cunningham to locate or procure or secure for you any timber lands in Alaska under any law or in any way?—A. I did not. Mr. Cunningham's authority to act for me was limited by the power of attorney which I gave him.

Q. In this same circular of October 20, 1905, I call your attention to the following:

We have located a permanent tunnel site on Clear Creek, which will cut all the various veins described in Mr. Hawkins's report, affording the best possible outlet. This tunnel will be 1,100 feet in length when it reaches the first of these coal measures, and continuing on it will be about 6,000 feet to the last seam; we are now building quarters to transfer our camp from Trout Creek to this point and as soon as the buildings are completed we will cut off most of our expense until definite plans are perfected.

Did that matter come to your attention?—A. Well, I must have read it. I don't remember it now; but receiving the report, I necessarily read it. Must have read it over, and must have seen this paper, but it made no impression on me. As I stated before, Mr. Cunningham had no authority to do anything of this sort for me, and his suggestions or speculations as to work of this kind did not influence me in the least. I never contemplated joining any such work as that, and never did join it.

Q. Did you at any time subsequent to that ever have any discussion with Mr. Cunningham concerning that matter?—A. If this tunnel that is referred to here is the same one as is referred to in Mr. Hawkins's report, I think I did. The tunnel projected in Mr. Hawkins's report as planned, would have started on the south line of my particular claim and have gone right through the claim to the north line and beyond. I think Mr. Cunningham spoke to me about that one time, and I advised against it, and suggested also that I thought there was some doubt as to the legality of driving that tunnel for joint development of those claims, and I suggested to him that he had better write to the department and see whether

it was permissible to do that. He did write to the department along the line that I suggested and some months later, I think possibly it was on his next return from Alaska, he showed me the answer that he had received from the department.

Q. Did you contemplate at the time you and Mr. Cunningham talked about it, or at any time, joining with Mr. Cunningham, or anyone else in the construction of any such tunnel?—A. No; as a matter of fact when I suggested that he write to the department I did not think it was legal, and I thought he would be shut off in that way, but the department's reply, I think, rather authorized the driving of such a tunnel, though suggesting that it would subject the entries to close scrutiny, or something of that sort, and in view of that, even though permissible, I thought it would be inexpedient to do it; and another reason why I was opposed to it, was the great cost and from the way it was projected it would only develop a very few of the claims, and that it would be a very heavy burden placed upon those few whose claims were benefited, and that it would not be proper to ask anyone else whose claim was not benefited to contribute to that expense.

Q. Was anything done subsequent to that time concerning the construction of any such tunnel, as far as you know?—A. Not to my knowledge.

Q. Mr. Burbidge, I want to ask you one more question, which counsel for the Government has seen fit to ask every other entryman who has gone on the stand. I call your attention to Government Exhibit No. 3, which is, as described by Mr. Sheridan, what is called the journal kept by Mr. Clarence Cunningham. Did you ever see any such a journal? [Handing witness exhibit.]—A. No; I did not.

Q. I call your attention to what is set out there on what is known as the first page of such book, and ask you if you ever had any such agreement with Clarence Cunningham at any time or at all, or with anyone else? (Witness examines paper.)—A. I never saw that.

Q. Did you ever have any such agreement?—A. Never had any such agreement as is there set out.

Q. Did you ever see that book or a copy of it or a copy of this first page before?—A. This is the first time I have ever seen it.

Mr. GRAY. That is all.

Recross-examination by Mr. SHERIDAN:

Q. With whom did you have this conversation concerning the projected tunnel, as set out in the back of Government Exhibit No. 7?—A. With Mr. Cunningham.

Q. When did you have this conversation?—A. Well, now, if you will find the date that he wrote to the department in regard to the legality of driving that tunnel, that will give you the date I had the conversation. That is, either that date or the day or so before that.

Q. I now hand you a letter signed by Clarence Cunningham, dated Wallace, Idaho, February 6, 1906, and ask you if that letter enables you to refresh your memory on that point. [Hands paper to witness.]—A. Yes; I had this conversation with Mr. Cunningham either on this day or a day or so before; that is, to say, as a result of my conversation with him and my suggestion that he write to the department, he said he would. Now, whether he wrote on that particular day or a day or two afterwards, I don't know.

Q. Approximately, at this time?—A. Yes.

Mr. SHERIDAN. We now offer in evidence, as Government Exhibit No. 43, a letter purporting to be signed by Clarence Cunningham, addressed to Hon. J. H. Fimple, acting commissioner, United States Land Office, Washington, D. C.

The COMMISSIONER. What is the date of it?

Mr. SHERIDAN. Dated Wallace, Idaho, February 6, 1906. And also the tracing attached to this letter, and therein referred to.

The COMMISSIONER. Is there any objection on the part of counsel to the letter offered by Mr. Sheridan?

Mr. HUGHES. We have no objection.

(Paper admitted in evidence and marked "Government Exhibit No. 43.")

Q. Mr. Burbidge, did you, at any time prior to this conversation just referred to between yourself and Clarence Cunningham, have any conversation with Mr. Cunningham, or any other of the entrymen now concerned, concerning this same proposed tunnel; the method of joint operation?—A. No, sir.

Q. Did you at any time subsequent to the occasion of this conversation referred to have any further conversation with Clarence Cunningham or the other entrymen concerning this method of development?—A. Yes; I did at some later time have some further conversation with Mr. Cunningham with regard to it. It was on that occasion that he showed me the answer received from the department, and he seemed to think that under that letter he would be justified in going ahead with a tunnel, but I was not desirous of having such a tunnel run, because I thought the expense was not warranted. To run a tunnel as long as that projected there would probably have cost \$150,000, and, as I said awhile ago, it would have actually developed only some six or eight of the claims, and I did not think that such an expenditure was warranted in the development of so small an amount of ground.

Q. In what way did you arrive at the conclusion that it would develop only six or seven of these claims?—A. Because it is reasonable to suppose that it would develop only, say, 1,000 feet each side along the course of the tunnel. To assume coal beyond that distance would have been assuming a great risk. The country was known to us, through Mr. Hawkins's report, to be broken up and faulted, and there was every probability that these faults through the coal had depth, and I should not have considered that a tunnel running that way, though it might cross a number of seams of coal, would develop them laterally for any great distance. Of course it, as a matter of fact, does not develop them any more than you can actually see, but you are justified in indulging in speculation to some extent. Now, when I was saying that I meant that is the limit of speculation I would indulge in, knowing the country to be broken and faulted.

Q. I believe you have stated you have never been on the claims or in Alaska.—A. I have never been in Alaska.

Mr. SHERIDAN. I wish to state at this time that I do not introduce the letter in response to Mr. Cunningham's letter last introduced as Government Exhibit 43, for the reason that Government Exhibit 43 contains a quotation of the letter in response thereto, as I understand it, and sets out the nature of its answer.

Mr. GRAY. Is that a full copy of that letter?

Mr. SHERIDAN. There is a complete copy of the letter in response to Mr. Cunningham's letter also to be found attached to Government Exhibit No. 2.

Mr. GRAY. The Government admits that that is a correct copy of the reply to Mr. Cunningham?

Mr. SHERIDAN. Yes. This copy of the Assistant Commissioner Semple's letter attached to and a part of Government Exhibit No. 2 is evidently a copy by Mr. Cunningham himself in attaching it to this, but I have no reason to question its accuracy so far as I am aware.

Q. Now, with reference to this water power, Mr. Burbidge, was it your idea when you received Mr. Cunningham's report, referring to such a possibility, that it was to be used in connection with the development of the mines or as a water power for the town of Katalla?—A. I don't really know where the town of Katalla is.

Q. You did not know anything about any connection with the town of Katalla and this water power?—A. No, I did not.

Q. Any proposed connection?—A. No.

Q. I now invite your attention to the power of attorney executed by you on the 20th of October, 1904, which is in evidence with the original entry papers under stipulation, and ask you to state if you can recall from whom you received this power of attorney?—A. I think I received it from Mr. Cunningham.

Q. Can you recall where Mr. Cunningham was at the time? Or did he bring it personally to you?—A. No; I do not. I don't know whether I got that from him or not, or whether he mailed it to me.

Q. I now invite your attention to one of the original entry papers for your coal claim, known as an affidavit of agent as to character of improvements, dated January 2, 1907, and executed before John W. Dudley.

Mr. GRAY. By whom?

Mr. SHERIDAN (continuing). The register of the Juneau, Alaska, land office, and purporting to be made by Clarence Cunningham. For the purpose of predicating a question, I will read a part of this affidavit:

That the nature of said improvements is as follows: Surface openings showing coal veins or deposits, trail leading to same, joint ownership of approximately 10 miles of graded wagon road built to bring machinery and supplies, together with a joint ownership in the tunnels driven on the Tenino claim on Trout Creek, which was done to prove the continuity of the coal measures, in depth, at a cost to said Burbidge of more than \$2,000.

I ask you in connection with that statement, Mr. Burbidge, if you had any discussion at any time with Clarence Cunningham as to the improvements on your claim and whether or not you understood those were to be your improvements as there described?—A. I have never seen this before, of course, but I have had no conversation with Mr. Cunningham specifying the nature of the work or improvements that had been done on my claim. As my agent that was left to his discretion.

Q. Did you, at any time, have any conversation with Clarence Cunningham or with any of the other entrymen in this group, from which you became aware that scrip had been placed on timber land to be used in connection with these claims, or otherwise, by any of these entrymen?—A. I had not, and I do not know to-day whether such scrip was bought or placed upon the timber.

Q. Have you any interest in Alaska, Mr. Burbidge?—A. No, sir.

Q. Did you, between the time of locating your claim and the time of receiving your final receipt for your coal claim, have any other interests in Alaska?—A. No, sir.

Mr. GRAY. That is all.

(Witness excused.)

FREDERICK H. MASON, produced as a witness on behalf of the claimants, being first duly sworn, testified as follows:

Direct examination by Mr. GRAY:

Q. What is your name, your residence, and your occupation?—A. Frederick H. Mason; Spokane; engaged in the hardware business.

Q. How long have you been in business here, Mr. Mason?—A. Since 1886.

Q. Are you acquainted with Clarence Cunningham?—A. I am.

Q. How long have you known Mr. Cunningham?—A. Why, probably fifteen or sixteen years.

Q. Where?—A. In Spokane. He often came here to Spokane and was engaged in mines in the Coeur d'Alenes, and came down here quite frequently, and I became acquainted with him.

Q. Prior to becoming interested in Alaska, and having him locate you a coal claim in Alaska, had you been interested with him in any business enterprises or any business ventures at any time?—A. Yes, sir, indirectly; the firm were interested with a venture in the Coeur d'Alenes which we were induced to go into, partially through Mr. Cunningham.

Q. What firm?—A. Holly, Mason, Marks & Co.

Q. A corporation?—A. A corporation.

Q. A mining venture?—A. In the nature of a mining venture; placer mining.

Q. What business was the corporation of Holly, Mason, Marks & Co. engaged in?—A. Hardware business.

Q. You were a member of that firm?—A. I was.

Q. Where were you engaged in business?—A. Well, in Spokane, although at one time we had branches in the Coeur d'Alenes.

Q. When did you first know anything about Mr. Cunningham having heard of, or found, or seen coal outcrops in Alaska?—A. Early in the year 1903, as I recall it.

Q. What business were you engaged in then, Mr. Mason?—A. Hardware business.

Q. Just state in your own way, how you came to know of this?—A. Well, at that time Mr. Peel was secretary of this corporation, and I was president. Mr. Peel brought the matter to my attention, and I rather discouraged it, but I might say further, in explanation—I desire to be as frank as possible in this explanation—that Mr. Peel and myself, at that time, in 1903, owned all of the stock in the Holly, Mason, Marks & Co., a corporation, and after the panic in 1903 there were a number of stockholders that were pretty badly pinched—

Q. 1893?—A. Yes, 1893. And we acquired this stock. Had an opportunity to get the stock at a very reasonable price, and we continued to purchase this outside stock until about 1897 or 1898, when we had acquired all of the stock and at that time I would once in a while say to Mr. Peel: "I think you are taking altogether too much

of this stock, I am afraid you will get into trouble." He says: "It is all right. My brother-in-law is in the bank and I have arranged to get credit." I warned him, and I says: "Here, you are going to get into trouble."

Mr. GRAY. Well, now—A. (continuing). So in 1903 we owned all of the stock. And he said, Mr. Cunningham—he lost some money—we went in with Cunningham once, with Mr. Cunningham. Mr. Cunningham was more friendly with Mr. Peel than he was with me. I rather discouraged the idea. It did not appeal to me very much.

Q. What idea?—A. Of going into this Cunningham coal venture up in Alaska. It did not appeal to me as much as it did to Mr. Peel.

Q. What did Mr. Peel say that Mr. Cunningham had told him?—A. Well, he stated that Mr. Cunningham, as near as I can recollect now, that Mr. Cunningham was going to locate some coal claims in Alaska for different parties, and was willing to locate one for us, and I told him I thought it would be out of our province to go into the business, and rather discouraged him, as I stated before, but he told me it would not cost very much, and he understood from Mr. Cunningham it would not cost to exceed \$2,500, and finally, against my judgment, I consented.

Q. Did you have any conversation with Mr. Cunningham at all about that time concerning the matter?—A. Yes; I think he spoke to me in regard to it; once or twice, possibly.

Q. For whom was this coal claim to be taken up and located?—A. Well, it was to be taken up by the corporation, Holly, Mason, Marks & Co., but it was taken in our names. We understood that a corporation could not take coal claims.

Q. Yours?—A. Mr. Peel and myself.

Q. That is Howell A. Peel?—A. That is Howell A. Peel; yes, sir.

Q. Did you have at that time any arrangement or contract or agreement, or did Mr. Peel have any, with Mr. Cunningham, that you knew of, under and by the terms of which Mr. Cunningham was to have any interest in this coal claim when you perfected title to it?—A. No, sir.

Q. Or did you have any understanding or agreement with Mr. Cunningham, or with Mr. Peel, or with any other person that you were to acquire it for a corporation then or thereafter to be formed?—A. No.

Q. Did you pay any money to Mr. Cunningham, Mr. Mason, on account of that?—A. Yes, sir; I believe that a draft was made upon either myself or Mr. Peel—I have forgotten now, and it was paid out of the funds of the corporation of Holly, Mason, Marks & Co., and was charged up to or—had Mr. Peel open an account with the company under the name of the Alaska Coal Field; \$500 I believe it was and the exchange, \$500.50.

Q. Were any subsequent sums paid to Mr. Cunningham by the corporation?—A. Yes; two or three times drafts were made for \$200.

Q. Mr. Mason, how long did Mr. Peel continue in that business with you?—A. Well, I was negotiating to buy him out at this time—in explanation of this I desire to make a statement. Mr. Peel was a very bright young man. Stood very high in this community; very exemplary in his character and habits. He was credit man in the year 1897 and 1898, and my health broke down and I had to be away from

business a great deal, and I left it with a perfect feeling of confidence, knowing that he was in charge—was a regular watch dog, and come back and found him at the helm. I had every confidence in the world in him, and he was one of my best friends. Along in, as near as I can recollect now, 1900, he was being pressed pretty hard by the bank, and perhaps for that reason—at any rate his character and habits changed, turned upside down, and in fact I believe he became mentally unbalanced or deranged—to such an extent that I had to go right into the business and watch it like a hawk myself. The fact of the matter was, we had an arrangement, a business agreement, that if I wanted to sell or he, that we would each offer the stock or the interest to the other. He came to me and confessed. He says: "You are right. I took too much of the stock and am being pressed, and I have got to sell and raise the money." And I strained every nerve to make the financial arrangement which would be necessary to buy his interest in the business, and, as I stated, in 1903, about the time Mr. Cunningham came to us, we had almost completed an arrangement by which I was to buy his interest in the business. Simply a difference of opinion as to the price, but in 1904, early in 1904, such an arrangement was perfected and I did purchase his interest in the business.

Q. Now, you are getting a year ahead, I think. Just let me call your attention again to the fact—wasn't it, as a matter of fact, early in 1905 that you finally purchased the business?—A. Well, it was purchased in 1904, but it started from January 1, 1905, so that Mr. Peel would be entitled, if there was any profits for the year 1904 to a division of the profits in the proportion to the stock which we each owned.

Q. The final adjustment between you came when?—A. Well, the stock had to be inventoried and, as a usual thing, it takes sometimes thirty days to inventory the stock and to close the books for the prior year.

Q. It was after the books had been closed and the stock inventoried on the 1st of January, 1905?—A. It was.

Q. I hand you herewith a copy of a power of attorney to Clarence Cunningham from you, acknowledged on the 21st of October, 1904, before F. W. Dewart, a notary public. Did you execute that instrument?—A. I did.

Q. I also at that time call your attention to an affidavit attached thereto, executed by you before the same notary public on the same date, and ask you if that is your affidavit. (Hands witness paper.)—A. It is.

Q. Up to the time that you bought and paid for Mr. Peel's interest or his stock in the firm of Holly, Mason, Marks & Co., some time after the 1st of January, 1905, from what account had the money which had been sent to Mr. Cunningham been taken?—A. From Holly, Mason, Marks & Co.

Q. I call your attention now to this affidavit which was executed on the 21st day of October, 1904, and to that portion thereof, Mr. Mason, which reads as follows:

I further swear that I am now in the actual possession of said coal lands, through my agent and attorney in fact, and make entry for my own use and benefit and not directly or indirectly for the use or benefit of any other party.

Was that true at the time you made it?—A. It was.

Q. That was some time, Mr. Mason, prior to the time when you bought Mr. Peel—made your final settlement with Mr. Peel. What have you to say as to that?—A. Well, I bought his interest, everything pertaining to the business, giving him the right to have the profits for 1904, and the final consummation of the transaction could not be closed up until these profits had been arrived at.

Q. In your negotiations with Mr. Peel prior to that time, had any mention been made of the exception from sale of this interest which he had in this coal claim, which had been located for the two of you in Alaska?—A. There was no exception whatever made. There was other ventures of a similar nature. No exceptions were made.

Q. Now, coming down to the time when you closed that transaction with Mr. Peel, was this coal claim in Alaska excepted from that conveyance?—A. No; it was not.

Q. I don't think you understand my question. At the time of the final consummation of that deal was it excepted, and if so, just state what the facts are.—A. There is some peculiar circumstances connected with that. I happened to meet Mr. Neill on the street the very day we were about to close the transaction.

Q. What Neill?—A. R. K. Neill. He had been up to Alaska, and I asked him in a general way what he thought of the claims. "Well, Mason," he says, "they are pretty good, but you or I will never be benefited. Our children or our grandchildren may," as near as I recollect. I went into the bank and Mr. Peel was there, and his brother-in-law, and this was fresh in my mind. I felt kind of sorry for Peel, and I happened to think of this, and I says to Peel, "Here, Howell, I will be willing, as far as I am concerned, to waive this coal venture," and I told him what Neill said; and he says, "That is very nice of you, and I thank you." I says, "It is to be understood you are to pay your proportion of the expense here now, or personally, for the expense or drafts made by Mr. Cunningham, or the expenses of the payment to the Government when it comes time to make that.

Q. Was any money paid to Mr. Cunningham on account of that coal claim which had been located by him?—A. After this time?

Q. Yes; after the time you made this affidavit in October, 1904?—A. Yes; there was several other drafts; payments made.

Q. Who paid them?—A. I paid them myself.

Q. Did Mr. Peel pay any part of them?—A. Well, he agreed to, but he was not in the city. I couldn't find him.

Q. Where was Mr. Peel during that time?—A. Well, Mr. Gray, Mr. Peel never came into our store again from the time I bought him out. He left the city, was away a great deal of the time, and it drifted along until this payment to the Government was to be made.

Q. He was in some rest cure in California?—A. Yes; a good deal of the time in California.

Q. Now, I call your attention to the application for patent which was sworn to by you on the 1st of February, 1906, before W. S. McRea, a notary public, and ask you if that is your signature. [Hands paper to witness.]—A. It is.

Q. I want to call your attention, Mr. Mason, to this language which you used in this application for patent:

That I am now in the actual possession of said land through my duly authorized agent, Clarence Cunningham, of Kayak, Alaska, whom I have heretofore
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appointed as such for the purpose of making the location record and entry of said coal land for me and in my name, and through whom I make the entry for my own use and benefit, and not directly or indirectly for the use and benefit of any other party.

What have you to say as to that statement, when considered in connection with the answer which you gave to my last question, that you had told Mr. Peel that he might remain an owner therein?—A. Well, I think I forgot the fact I had voluntarily agreed to give Mr. Peel a part at the time he went out; at the time I signed that affidavit.

Q. Had you or had—it did not occur to you at that time?—A. No, sir.

Q. Mr. Mason, I will ask you if at the time you signed that affidavit, or at any time prior thereto, save and except as to these transactions with Mr. Peel that you have already testified to, had you had any contract or agreement or understanding, express or implied, with Clarence Cunningham or any other entrymen in that district or with any person by which the title which you secured was to inure to the benefit of anyone but yourself? I am excluding the Peel matter now.—A. No, sir; I did not.

Q. Were you under any obligation or promise or understanding of any nature whatever with any person other than with Mr. Peel that when you acquired that coal claim that you would ever deed it or any interest in it should inure to the benefit to such other person or would be combined or would be transferred to any corporation or association?—A. No, sir.

Q. Were you under any obligation or promise to join it with any other coal claim?—A. No.

Q. For any purpose?—A. No.

Q. I call your attention to an affidavit referred to here as the Love affidavit, and will ask you if that is your signature?—A. Yes, sir.

Q. I hand you an affidavit sworn to before N. E. Nuzum on the 2d day of March, 1907.

Mr. SHERIDAN. That is the one you refer to as the Love affidavit?

Mr. GRAY. The Love affidavit.

Q. Mr. Mason, you paid the Government for the land included in this coal claim?—A. I did.

Q. How much money did you send, and in what manner, and to whom?—A. Why, \$1,600, according to my best recollection; it was sent to the National Bank of Commerce under instructions from Mr. Cunningham that they transmit it to Alaska.

Q. To whom? To the land officers there?—A. To the land office there; I forget their names.

Q. And did you receive, however, some time subsequently to the 11th of April, 1907, a receiver's coal receipt and final certificate of purchase?—A. Yes; I doubt very much if it was prior to April 11.

Q. I should say subsequent to that time?—A. Oh, yes; subsequent, I did; I received such a receipt.

Q. Mr. Mason, after making application for patent at or about the time of sending the Government the purchase price for the land, and at or about the time of making the Love affidavit about this matter, and your conversation with Mr. Peel at the time you took over this stock, at that time the deal to take over his stock was finally consummated according to your recollection?—A. It did.

The matter came to me in a different light, involving rather large sums, as compared with the drafts for \$100 and \$200 as Cunningham had been sending, all of which brought the matter to my attention and I endeavored to find Mr. Peel but he was not in the city, and his best friend, who was his attorney, said he had been endeavoring to locate him, but he happened to know that Mr. Peel's father had been given a power of attorney by Mr. Peel in California; and at this time this gentleman was an attorney, and I told him and I think I showed him the Love affidavit, which I was requested to sign, and I told him about this voluntary—voluntarily having told Mr. Peel at the time I bought him out that I would take care of this Alaska coal matter. "Well," he says, "you can not sign this affidavit. It is impossible. It is impossible, it would not be the truth." "Well," I says, "what can we do?" And he says, "the only thing I can suggest, Mr. Peel's father, who has the power of attorney, is in the city and we will get him up here," and I told the attorney just at the same time that about in six months or so after I had bought Mr. Peel's interest in the business, a matter had come up which we had overlooked, amounting to about \$1,000, and Mr. Peel was in the city at that time. I located him and called the matter to his attention, and, he says, "why certainly, that is all right, it is a matter we overlooked and I will pay you, but," he says, "I have not got the money. But I will give you my note if you will accept it." And, I says, "I would, that was all right;" and so he gave me his note for four years for \$1,000, and I told the attorney about that, and Mr. Peel's father came up into the office, and I, on the advice of his attorney, purchased from Peel's father all the interest in the Alaska coal and turned over this note in payment, which amounted at that time to about \$1,100, and that was very nearly about the amount of his half.

Q. Upon the advice of that attorney, you then sent the money and signed the above affidavit?—A. Yes, sir; and I will say further that at that time I told Mr. Peel's father I would give Howell two years' time as far as that was concerned, if he could to repay the \$1,100 I had taken and the \$800 which would be his half of the money that went to the Government, together with the half of the entire draft made by Cunningham, and that I would then hold this half for him, if he would pay me the money.

Q. Did he ever exercise any such privilege?—A. No; not in the two years, which have expired, and I think it is very nearly three years now—it will be three years in March.

Q. Well, how have you, since that two years, ever given a deed, or how have you considered the matter and looked upon it, or how do you look upon it now?—A. Well, frankly, I will say that I feel under great obligation to Mr. Peel for what he had done when he was my partner, and I will say, frankly, right now, that it is my inclination and very probably if I ever secure a deed for title to this Alaska coal claim that I will, in all probability, deed an interest to Mr. Peel.

Q. What interest will it be, or is it your intention to deed it to him?—A. Well, I understand that Mr. Peel has married and settled down and regained his health, which he had lost, and his old steady habits; and I am inclined to deed him, if I ever secure this title, a one-half interest.

Q. And that has been your intention, Mr. Mason, to voluntarily do that since that time, has it?—A. Yes, sir.

Q. Mr. Mason, referring now to the affidavit known as the Love affidavit, I call your attention to the following language contained therein: "That said location was made for the sole use and benefit of affiant and has ever since so remained his and in his exclusive control; that at no time prior to the location, or at such time or since, has affiant entered into any agreement, express or implied, or pledged himself by promise or otherwise, express or implied, by which the title to said land or any part thereof or any interest therein is to pass to any other person or association whatsoever; that in event that said claim goes to entry in the United States land office in Juneau, Alaska, and receiver's receipt for the purchase price issues, he will not be under any contract or obligation or promise to sell or convey said tracts to any person or persons or associations or to put same into any company or joint holding for any purpose or otherwise dispose of same, but will be free in every way to hold said tract, to lease or sell it at any future time; that he does not now know any person or persons or association or individual that contemplates the leasing or purchase of said tract." Leaving out of consideration all questions relating to Howell Peel, was that affidavit true at the time you made it and were those statements true?—A. It was.

Q. At the time you made it did you believe or know or understand that in any way that the promise or statement that you had made—that you would give Howell Peel a half interest in that—in any way conflicted with that statement?—A. No, sir.

Q. If you had known it would you have done so?—A. Why, I would have put it in the affidavit.

Q. That is as you tell it here?—A. Well, I would state in the affidavit that it was my purpose to give this interest to Howell Peel even if I lost the claim.

Q. Mr. Mason, did you, at the time you gave this half interest to Howell Peel, at the time these negotiations were finally concluded, was there any consideration passed from Howell Peel to you as a consideration for your telling him that he might have a half interest in that coal claim?—A. No; it was entirely voluntary on my part.

Q. The moneys expended, prior to that time, had they been the funds taken from the business of the Holly-Mason-Marks Company, the corporation which you and he owned all the stock of?—A. Every bit of it.

Q. Is or is not the present statement you make that you intend to give or to deed him a half interest in that claim entirely voluntary on your part?—A. Yes; I don't think he has any claim, whatever. He forfeited his claim, if he had one, by not coming around in the two years, and I don't believe he will ever pay it back.

Q. And it is your intention, if you get that claim, to convey to him an undivided half interest?—A. It is.

Q. Mr. Mason, at the time you received final certificate of purchase from the United States or prior thereto, and entirely leaving out of consideration Howell W. Peel, did you ever make any contract or agreement, or were you or did you ever have any understanding with Clarence Cunningham, or with any person whatever, that you would hold that claim or any interest in it for Clarence Cunningham or such other of the entrymen, or for any corporation then in existence or thereafter to be formed?—A. No.

Q. Or for any company or association of entrymen up there, or of others?—A. No.

Q. Were you under any understanding, promise, or obligation of any kind or nature, to unite that claim or any other coal claim or any interest in it with any other claim for the purpose of mining or for combining or joint ownership or use?—A. No.

Q. Mr. Mason, you were present in this city at a meeting held on the 15th day of May, 1907, in the office of Finch & Campbell?—A. I believe I was.

Q. I now hand you Claimants' Exhibit No. 3, and I will ask you if that is as you recall it, according to your recollection, a correct statement of the proceedings of that meeting?—A. As I recollect it, that seems to be apparently a correct statement.

Q. I call your attention to the following which is reported in these minutes to have occurred at that time. "Thereupon, upon motion of Mr. Sweeney, seconded by Mr. Finch, the chairman was authorized to appoint a committee of 5 who should organize a corporation for the purpose of acquiring coal lands owned by those present and such other claim owners as might desire the corporation, the committee to secure deeds to the mining claims and issue receipts therefor, and take all necessary steps to complete the organization of the company, ready for the transaction of business." Do you recall that, Mr. Mason?—A. I do.

Q. Prior to that time had you ever had any understanding or agreement with Clarence Cunningham or any other entrymen in that district that you would join with them in the organization of a corporation to take over that claim or any other coal claim in that district?—A. No.

Q. Did you have any understanding or agreement with them that you would unite or consolidate or combine your claim with others, or any others, for the purpose of working it or mining it?—A. No.

Q. I hand you Government Exhibit 18, and ask you if that is your signature?—A. Yes.

Q. I wish you would state, Mr. Mason, how this affidavit came to be made, in your own way; just state what the facts are.—A. I think it was Mr. Jones, a representative of the Government, called at my office one day and said he was representing the Land Office, and desired to investigate these Cunningham coal claims, and I told him I would be only too glad to give him any information that I could, and I was rather glad he had come around, anyway; and I went thoroughly into the matter, and I told him about the Guggenheim proposition, and I told him everything I knew in regard to it; did not make any bones of it whatever; and he was a very courteous gentleman, and went back to the hotel, as I recollect, and came back to the office, I think it was the next morning, and he had written this out and he handed it over to me and I read it over; and he says, "Is that right?" referring to our conversation yesterday; and I says, "I must state that you have not exaggerated it a particle;" and he says, "Will you sign this?" and I says, "I would like to go down to Mr. Wakefield's office—he has been looking after the claim—and let him look it over to see if there is anything I don't want to sign;" and he said, "All right;" and we went down to Mr. Wakefield's office—

Q. (Interrupting.) Who went down?—A. (Continuing.) Mr. Jones and myself. And while we were there Mr. Wakefield in the meantime

read the affidavit, and he said it was all right; and I said, "There is nothing in that that I can see that is not true;" and he says, "All right, if you will sign it;" and Mr. Campbell happened to come into the office, and Mr. Wakefield was his attorney. Being one of the claimants, Mr. Wakefield read this affidavit that Mr. Jones had prepared to Mr. Campbell, and Mr. Campbell indorsed it and also signed it.

Q. And did you then deliver it to Mr. Jones?—A. I then delivered it to Mr. Jones.

Q. Is this Mr. Jones [pointing to Horace Tillard Jones, who was seated behind Mr. Sheridan], the same gentleman sitting here?—A. I believe it is. I have not seen him from that time to this, and do not know him, but I believe that is the gentleman.

Q. Now, calling your attention to Government Exhibit 17 [handing witness paper]?—A. Yes, sir; that is my letter, my indorsement of Mr. Cunningham's affidavit.

Q. You made that affidavit, did you, Mr. Mason?—A. I did.

Q. Where did you get that affidavit from?—A. It came from Mr. Glavis, by letter received from him, in which he stated that he—well, I guess that is not necessary, to repeat that letter—it has been repeated here several times.

Q. Go ahead; just state what you did.—A. And the Cunningham affidavit, of course, I had been—I took it for granted he had legal counsel in Seattle, and had prepared that under legal advice, and I did not question for a minute but what that was all right; and the affidavit he prepared for me, there were clauses in there which said there was an understanding—well, I supposed he referred to the understanding of the May meeting, which was the understanding to form a corporation, and I did not question the matter; and inasmuch as I had been so very free with Mr. Jones, and had prepared an affidavit which covered the case, as I thought, much more fully than this affidavit, I did not have any hesitancy whatever about signing it, although I took the precaution to call up some of the other entrymen to see if they had received letters of that character. Mr. Glavis stated in his letter that other entrymen had signed the affidavit that Cunningham had sent us; and Mr. Finch was out of the city, and Mr. Campbell was out of the city, and I believe Arthur D. Jones received a letter like it and stated he was going to sign it, and so I signed it and sent it to Glavis. That is that letter which is attached to it.

Mr. HUGHES. What is that letter—

Q. I call your attention to the following language: "We have understood among ourselves that when title was secured we would form a company and combine the entire group, as the conditions are such that one claim can not be profitably mined, as anyone familiar with coal mining appreciates." What did you mean by the use of that language?—A. Well, the understanding that I understood from that language—that the understanding that was had at the meeting held in Finch & Campbell's office that we would form a corporation.

Q. In May, 1907?—A. In May, 1907.

Q. Was that corporation ever formed?—A. No, sir.

Q. Did you subsequently to that meeting in May, 1907, make a deed of your coal claim?—A. No; I don't think I ever made that deed.

Q. Mr. Mason, were you present at that meeting on the 16th? One other thing in connection with this affidavit which you made for Mr.

Glavis. You say that you know of your own personal knowledge that the statements contained in the foregoing affidavit are true, so far as they pertain to the Guggenheim syndicate, "and the understanding existing among ourselves as to the disposition of our claims. I know positively that the Guggenheims had nothing to do with our claims whatever." To what did you refer to in that language?—A. I could not see that that statement differed very much from the affidavit which I had made for Mr. Jones, although at the time I had mislaid my copy of that, and had no way by which I could compare it.

Q. Were you present at a meeting held on the 16th of July, 1907, at the office of Finch & Campbell, of the owners of coal claims in the Kayak district?—A. Yes, sir.

Q. I now hand you, herewith, Claimants' Exhibit No. 4, Mr. Mason; did you ever—have you read that all through [handing paper to witness]?—A. Yes, sir.

Q. Mr. Mason, at that meeting a committee was appointed to go to Salt Lake City to confer with some gentleman who was connected with the Guggenheims; is that correct?—A. Yes, sir.

Q. State, as near as you can, what you recall in connection with the appointment of that committee, and what was its purpose; all in regard to that matter?—A. Well, there was considerable opposition at this meeting to the general proposition of conferring or negotiating with the Guggenheims. I believe I was originally appointed on that committee myself, but refused to act.

Q. For what reason?—A. Well, I did not like the proposition very much and the part in there which says that the meeting ratified—agreed to ratify the action of the committee—that is not in accordance with my recollection to the meeting. There must have been some mistake made there, because I don't believe I ever agreed to ratify the action of the committee. I think it was about—the committee was to go down there and look into the proposition, and if the proposition which was brought back here was acceptable to the entrymen, then it might be ratified or not.

Q. Did you understand that this committee went to Salt Lake City with power to deal concerning your coal claim and agree to convey it?—A. No.

Q. On any proposition which was not ratified by you after you had seen it?—A. No.

Q. Did you afterwards see the proposition which was made at Salt Lake City, set out here in Government Exhibit 10, with the Guggenheims?—A. Yes.

Q. Did you approve of that, or ever agree to the terms of that proposition?—A. No; something did not strike me very favorable in that proposition.

Q. But you never agreed to the terms of it?—A. No.

Mr. GRAY. Take the witness.

Cross-examination by Mr. SHERIDAN:

Q. How old are you, Mr. Mason?—A. Fifty-five.

Q. What business were you engaged in at the time you made this location in Alaska?—A. Hardware business.

Q. And you have continuously been engaged in it down to this time, as I understand you?—A. I have.

Q. Now, Mr. Mason, give us in your own words and as briefly as possible what was the showing and facts as represented to you by Clarence Cunningham or any other of the entrymen now concerned which induced you to take up this coal claim; just briefly.—A. Well, Mr. Sheridan, the conversation was had principally with Mr. Peel, my partner; as I said before, I was rather inclined to discourage it and not give my consent. Mr. Peel, however, insisted that he thought that would be a good way to recover some of the money we had lost prior to this time through ventures we went into on account of Mr. Cunningham. I was a very busy man at the time he returned, and I finally gave my consent.

Q. Yes; so it was on the grounds advanced by Mr. Peel, as just stated by you, that there was a chance to make some money back in this matter that you went into it?—A. Yes; it was.

Q. Now, did Mr. Peel and yourself consider just how you were going to make this money back on this claim?—A. Why, I think so.

Q. Well, now, just what was your idea on that point?—A. Well, it was considerably more Peel's account than it was mine. He was always inclined to go into these different ventures and I, after consideration, thought that coal in Alaska might be of good value, especially as it was within a short distance of the ocean, and I realized that in order to develop coal mines it would take a large amount of capital, and, as I have stated in the affidavit I made to Mr. Jones, we all realized that in order to develop a property of that size that it would require a railroad and coal bunkers and tipples and an immense amount of expenditure, and the popular idea was we would likely do so that we could secure the titles, and to be applied—to form a corporation and place an issue of bonds upon the entire proposition and retain control absolutely of it, we could dictate the prices and how we wanted to sell it, and certainly, to put the proposition through, it would be a matter which would require an immense capital and it would be some time before it could be done.

Q. Yes; and that was your idea and your understanding of the matter when you went into this coal matter?—A. Yes, it was.

Q. How many of the entrymen in this group did you know at the time you took up this claim?—A. At the time I took it up?

Q. Yes; at the time when you located it.—A. Oh, I did not know many people at that time. That is, there were not many people in it. We went in among the very first.

Q. About how many?—A. Then Finch & Campbell were in, and I think Governor Moore went in, and others, they were the men in it at the time we went in; but, afterwards, at the time of making the affidavit, where I say I know all of the other entrymen, that was an oversight on my part, because I did not know of them.

Q. Well, how many?—A. Well, I suppose 15 or 20 members.

Q. Now, calling your attention, Mr. Mason, to the power of attorney executed by you on the 21st day of October, 1904, appointing Clarence Cunningham as your agent, and introduced in evidence under stipulation between counsel, I now ask you if the understanding as stated by you, concerning your purpose in taking up this claim and your understanding of the facts connected therewith, as already testified to by you, was the understanding that you had at the time you signed this affidavit?—A. Yes.

Mr. GRAY. That is not an affidavit.

Mr. SHERIDAN. No; it is a power of attorney.

Q. Now, as I understand you——

Mr. GRAY. What understanding?

Mr. SHERIDAN. I mean, as he has testified.

Mr. GRAY. I have a right to know. I will ask the reporter to read the record if you do not tell me.

Mr. SHERIDAN. I do not remember all of it.

Mr. GRAY. Then I object to the question as referring to too many things. I think the question is entirely improper.

Mr. SHERIDAN. Just read the question.

Mr. GRAY. Now I want to know what understanding——

The COMMISSIONER. Read the record, Mr. Stenographer.

(And thereupon the record of the entire cross-examination of this witness was read by the reporter.)

Mr. GRAY. Now, hold on; I want to object to that. I object for the reason there is no evidence in the cross-examination of the witness of any understanding with anyone. The question is too indefinite and uncertain to call for any answer at all. It is confusing to the witness, it is confusing to me, and it will certainly be confusing to anyone who reads it. The only thing he said was he had the idea, and counsel is basing a question upon that. Just ask him if he had any such understanding at that time as that. I think it is misleading and unfair to the witness.

The COMMISSIONER. I understand the question to relate to his own understanding of the matter and not what understanding he had with other people; but what his own idea was at the time he executed that affidavit, or rather this power of attorney to Cunningham.

Mr. SHERIDAN. I think the questions propounded by me on cross-examination and the answers given by the witness will speak very plainly for themselves.

The COMMISSIONER. I think so, too, Mr. Sheridan, but I had the right to make the statement I did.

Mr. SHERIDAN. I am not criticising the commissioner at all.

The COMMISSIONER. I suppose that we are to receive this testimony here, and it is supposed to be received in some sort of an intelligent manner.

Mr. SHERIDAN. I wish to state to the commissioner I was not wishing to make any criticism of him at all; I am merely stating that the record is clear enough to satisfy me if Mr. Gray did not understand it.

The COMMISSIONER. You may proceed.

Q. Now, what conversation, if any, did you have with any of the entrymen concerned, other than Clarence Cunningham and also excluding your business partner, when you took up this claim concerning the method of developing your claim?—A. I do not recall, Mr. Sheridan, of ever having had any conversation in the early part of the entry with any of the entrymen otherwise than with Mr. Peel.

Q. Were you acquainted with Governor Moore at the time you took up your coal claim?—A. No; I don't believe that I was.

Q. What entrymen were you acquainted with, just prior to the taking up of your claim, if any?—A. I do not believe there was any I was acquainted with personally at that time.

Q. Were representations made to you by Mr. Peel or by Mr. Clarence Cunningham before you did make your location that others were making locations or had made locations in that locality?—A. I think

that representations were made to Mr. Peel that he was going to take up this claim, with some other parties, including Governor Moore.

Q. But you had no such conversation with any such parties prior to making your own location?—A. No, sir; not that I recall.

Q. Now, subsequent to the location of your claim, Mr. Mason, did you have any conversation with Clarence Cunningham concerning what he was to do on your claim?—A. Not that I recollect of. Most of the time when Clarence Cunningham came to Spokane, he would talk more with Mr. Peel than he would with me, that is for the six months or so after the deal was made. Probably I had some conversations with him, but, as I have stated before, I was a pretty busy man and did not have much time to devote to this coal venture.

Q. Now, then, did you leave the matter of arrangement concerning this coal claim of yours to Mr. Peel to transact with Mr. Cunningham?—A. Well, Mr. Cunningham was away and made these entries, and it was not but a comparatively short time after until Mr. Peel—I purchased his interest in the business. After that the reports would come from Mr. Cunningham, and when he came to Spokane he would come in and see me. Mr. Peel was not in the city at that time?

Q. Yes; but up to the time Mr. Peel dropped out of the partnership—that is, when he ceased to be present in Spokane—did Mr. Peel attend to this coal claim with Mr. Cunningham exclusively?—A. No; not exactly.

Q. You had some negotiations with Cunningham yourself?—A. I probably had some conversations with him, I think, when he came to see me—he would probably see us both—come to see me in my office and Peel, too.

Q. Now, do you recall, approximate, how many conversations you had with Mr. Cunningham before Peel went away from Spokane, as it appeared to you?—A. Oh, I should judge one or two; I can not recall exactly.

Q. Now, could you recall the substance of the conversations you had on those occasions with Mr. Clarence Cunningham?—A. No; the substance of it was, I suppose, he was going to make these entries, and he was to come around—the stenographer seems to have got it wrong in my answer. Finch & Campbell were not in until after we got in there, but I remember in one of the conversations he stated that he had made arrangements with Finch & Campbell and he mentioned others whom I knew who had decided to take these claims and authorized him to make entries for them.

Q. Did Mr. Cunningham tell you that before you made your location or after?

Mr. HUGHES. You mean the first location?

The WITNESS. After.

Mr. HUGHES. Or the last one?

Mr. SHERIDAN. His first location.

Q. Can you recall anything which was said between you and Cunningham after this first couple of conversations with him?—A. Nothing more than I wished him good luck, and I told him I thought it was money being thrown away and there was very little chance of our getting very little out of it, I recollect. I told Cunningham I had gone into it because Peel had represented it to me against my better judgment, etc., as near as I can recollect; but I wished him luck, and hoped, however, he would make a success of it.

Q. Now, what arrangement, if any, did you have with Cunningham at that time, the first time you authorized him to make a location for you in Alaska, concerning his compensation?—A. Well, there was no arrangement whatever made—no compensation for his services that I knew anything about, although I took it for granted that he was going to be compensated.

Q. In what way?—A. In some way, probably by salary. I understood he was going to make the drafts on us, and I understood also that the total expenses, including the amount which was to be paid to the Government, as stated to Peel, and by Peel to me, would not probably exceed \$2,500. Well, whatever that was, I took it for granted he was to be compensated for his services, as a man would not naturally go to Alaska and risk his life on that general custom in this part of the country in these mining ventures. They are generally gone into haphazard and take chances in this western country, you know, and I was accustomed to that; I had gone into 50 of them before.

Q. So you merely assumed that he was going to compensate himself out of the money advanced him on your claim, or the claim of yourself and Mr. Peel?—A. At that time I knew nothing about it, about his method of getting his compensation.

Q. Now, did you give any instructions to Clarence Cunningham concerning the work to be done on your claim?—A. No; not that I recollect with reference to it.

Q. Did you authorize him to build trails on that claim and the claims of adjoining entrymen and the prospecting by tunnels and cuts on the group of entries?—A. Why, I don't recall authorizing him personally, although I would have agreed to have done so, and I saw that these trails were being built and other developments being carried on from his reports received afterwards.

Q. You expressed no dissent to what was stated in these reports, did you, Mr. Mason?—A. No, sir.

Q. You understood as you received them from time to time that part of your money was being expended for general trail building and prospecting over that entire group, did you not?—A. I did.

Q. Were you informed at any time by Clarence Cunningham as to exactly what were the improvements made on your individual claim?—A. No.

Q. What is the name of your claim as you recall it?—A. As I recall it it was called the Adrian.

Q. Did you know by any reports or otherwise that you received from Mr. Cunningham, or from conversations with him or other entrymen who had been in Alaska, what proportion of developments were made on your claim?—A. No; all I recollect about it is I asked one time if there was any coal on my claim and he said no.

Mr. HUGHES. [Laughs.] A. (Continuing.) I was on the outskirts, I should judge from what I learned then.

Q. You stated that Mr. Cunningham said that there was no coal to be found on your claim.—A. As near as I can recollect, Mr. Sheridan, he said there was lots of coal there and I asked him the question if there was any on my own claim. I did not think there was. I was sort of on the outside of the coal group, although I may not be right about that. That is my recollection.

Q. Now, I desire to call your attention to what is described as "Affidavit of agent as to character of improvements," being one of the entry papers already in evidence and by stipulation and which is signed by Clarence Cunningham and bears date January 2, 1907, and which was executed before John W. Dudley, register of the United States Land Office at Juneau, Alaska, and before propounding the question to you concerning this paper I wish to quote a part of it: "That the nature of such improvements is as follows: Tunnels and cuts driven on the exposed coal measures, together with a joint interest in several hundred feet of tunnels driven on the adjoining Tenino claim to determine the commercial value of such coal to the cost to said F. H. Mason of \$2,000." I will ask you whether you were at any time consulted or advised concerning such improvements on your claim or on adjoining claims?

MR. GRAY. I object to the form of the question and I further object to it on the further grounds that the witness has already answered in two or three ways. He said he had not instructed Cunningham what improvements to put there and he had not been told by Mr. Cunningham what he had. Now, it seems to encumber the record, it seems to me.

THE COMMISSIONER. He may answer the question.

A. Why, I knew in a general way they were doing work up there, Mr. Sheridan. I never saw that affidavit before. I knew that we were paying for it and I knew there could not be much work without trails and tunnels and I was leaving that matter entirely to Mr. Cunningham, and it never was brought to my notice at all.

Q. Whatever he did in connection with your claim had your approval and has it now?—A. Yes, sir.

Q. Did you receive from time to time statements of the expenditures being made by Clarence Cunningham and the progress made in connection with that claim of yours and adjoining claims?—A. Yes; I think part of these reports which have been exhibited here were received by me.

Q. I believe Government Exhibits 5, 6, 8, and 9 have already been presented to you?—A. Yes, sir.

Q. And you have acknowledged that you received such reports from Mr. Cunningham?—A. Yes, I received them, I believe, placed them on file, and I did not pay much attention to them, and did not read them carefully.

Q. Did you at any time express to anybody dissent to any of the matters set out in these reports?—A. No, not that I recollect of.

Q. I have here, Mr. Mason, Government Exhibit 17, which consists of a copy of the affidavit of Clarence Cunningham of March 6, 1908, and your corroboration thereof. I notice that your corroboration is dated April 27, 1908, and that the letter returning it is dated April 25, 1908?

MR. GRAY. What is that?

(Question read by the stenographer.)

Q. I will call your attention to this discrepancy for the purpose of having your views on the matter. That was merely a typographical error as near as you know, Mr. Mason?—A. Why, it must have been.

(And thereupon the further hearing of this inquiry was adjourned to 9.30 o'clock a. m., December 9, 1909.)

DECEMBER 9, 1909—9.30 A. M.

INQUIRY RESUMED.

Hon. William J. McGee, United States special commissioner; Mr. James M. Sheridan and Mr. William B. Pugh, counsel for the Government; Mr. E. C. Hughes and Mr. John P. Gray, counsel for the claimants.

FREDERICK M. MASON on the stand.

Cross-examination by Mr. SHERIDAN (resumed):

Q. I now hand you Government Exhibit No. 29 containing the articles of incorporation of the Behring River Railroad Company, and ask you to give us what you understand concerning such organization, and state whether or no you have at any time since becoming interested in your coal claim in Alaska, down to the present time, have had any interest in any such an organization?—A. This is the first time, Mr. Sheridan, I ever saw this paper, and I have at no time had any interest in such an organization.

Q. Have you ever attended any meetings in connection with such an organization?—A. No, sir.

Q. I now hand you Government Exhibit No. 10, being what has been referred to as the Guggenheim memoranda, and I ask you to give us as briefly as you can, and in your own language, concerning what you know of that memorandum and its contents?—A. This memorandum was brought to my attention—I think it was a copy of it—after the return of the committee from Salt Lake. There were some things in it which I did not quite agree with, and did not meet with my approval.

Q. What were the things in this that did not meet with your approval?—A. Well, the fact that the proposed company intended to give the Guggenheims one-half of the stock for \$250,000, and the Guggenheims owned the railroad entirely themselves in their name, and in our interest it would not be a good policy to pursue.

Q. Was that the only objectionable feature or were there others?—A. I think those were the only serious objectionable features.

Q. I believe you have testified you were present at a meeting set out in the minutes of May 15, 1907, in Claimants' Exhibit No. 3, Mr. Mason [hands witness paper]?—A. Yes, sir.

Q. You have no criticism to make of the minutes as therein stated? [Witness examines paper.]

Mr. GRAY. I suppose by that you mean, Mr. Sheridan, that they agree with his recollection of what occurred?

Mr. SHERIDAN. Yes.

A. No, sir.

Q. I now hand you Claimants' Exhibit No. 4, which are the minutes of the meeting of July 16, 1907, and ask you to state if they accord with your understanding of what occurred at that meeting. I believe you were present at that meeting also?—A. Yes, sir; I think so, with the exception I do not remember of having agreed to ratifying.

Q. Otherwise they are correctly stated?—A. Yes, sir.

Q. Mr. Mason, I invite your attention to an affidavit signed by you, dated March 2, 1907, and known as the affidavit of applicant and also as affiant's affidavit as to use and benefit, which is in evi-

dence under stipulation, with the original entry papers in your coal claim, and I ask you to state, as nearly as you can recall, how this came into your possession.—A. Why, I believe, Mr. Sheridan, that that was mailed to me.

Q. By whom?—A. I am not sure whether it came from—probably by Mr. Cunningham.

Q. Do you recall whether or not it was accompanied by a letter of transmission?—A. No; I do not. Probably it was.

Q. You stated, Mr. Mason, in talking of your relations with Mr. Peel, your former business partner in connection with your coal claim in Alaska, that you waived the Alaska coal. I did not quite understand that expression. What did you mean by that?—A. At the time I made the final payments or bought his interest I told him, of my own free will, that I would except the Alaska coal.

Q. That is, you would accept it—A. Except it.

Q. Except it. Yes; I see. Therefore that you bought out his interest in everything except his interest in that coal claim, as I understand it?—A. I gave him the privilege of paying his proportion of any drafts which might be made in the future, or any payments to the Government, and told him that I would give him—except from everything which I had purchased, which included that—I would except that.

Q. In other words you would give him an opportunity to come in when he wanted to pay up his part of the expenses in connection with that claim, and that in case he should so pay up he would have a half interest as already testified by you?—A. I did.

Q. Now, as I understand it you took a note from him for \$1,000?—A. Some few months afterwards there was a matter came up which we had overlooked and he couldn't pay me, and I took his note for \$1,000 with interest.

Q. A few months after the transfer had been made to you?—A. Yes.

Q. Now, has that note ever been paid?—A. No; I gave the note to Mr. Peel's father.

Q. It still remains unpaid?

Mr. GRAY. I think you misunderstand him.

A. Why, the note was delivered to Mr. Peel's father in payment for Mr. Peel's interest in this claim.

Q. I see. That was in payment for the interest you purchased from Mr. Peel, your former business partner?—A. Yes.

Mr. GRAY. I don't think that is a fair question for the witness.

Mr. HUGHES. I think it arises entirely from Mr. Sheridan's misunderstanding. I don't think he intends to put the witness in a position where he says something he don't mean.

Mr. SHERIDAN. I do not.

Mr. HUGHES. If you will permit me to explain a moment; what Mr. Mason has endeavored to say is that subsequent to the completion of the transactions by which he purchased his partner it was ascertained that his partner owed him in some other matter a \$1,000 for which he gave him his note; that when he came to about the time of the payment of the price to the Government, inasmuch as his partner had not in the meantime paid any portion of the payments of the drafts drawn by Mr. Cunningham, he went to see him and wanted him to pay up his half of the \$1,600 and these matters if he

wanted to retain the interest he had voluntarily given him in this matter, and being unable to do it he settled with him by giving him back his note as the equivalent.

The COMMISSIONER. He gave it to his father?

Mr. HUGHES. He gave it to his father—

The COMMISSIONER. Who held his power of attorney, as explained before.

Mr. HUGHES. Yes; and that settled and relieved the matter of the interest that he had voluntarily given him in this matter.

Q. Now, that explanation as just given by Mr. Hughes is your understanding, is it, Mr. Mason?—A. It is.

Q. But I believe you testified yesterday that if you obtained patent you intended to give a half interest to Mr. Peel, your former business partner?—A. I did.

Q. Have you any other interests in Alaska, Mr. Mason?—A. No.

Q. Have you at any time since you made your location on this coal claim down to and including the time of final receipt, had any other interest in Alaska?—A. No, sir.

Q. Have you at the present time other than this coal claim?—A. Well, about three or four days ago, to help a friend of mine, that sent a letter from Chicago, I bought an interest in some water rights up there which I don't believe I will ever hear from them, though.

Q. Are these the same water rights that have been referred to in testimony in this inquiry?—A. No.

Q. In what part of Alaska are they?

Mr. GRAY. Object as immaterial.

A. Near Juneau.

Mr. GRAY. Wait a minute. Well, go ahead. He has answered the question.

The COMMISSIONER. You asked if they were the same water rights that were spoken of in this proceeding?

Mr. SHERIDAN. Yes.

The COMMISSIONER. Then, I sustain the objection. They have nothing to do—if they are not the same water rights that are spoken of and are mentioned in this proceeding—they are nothing at all. It is immaterial—this answer.

Mr. GRAY. Mr. Mason answers so fast that I can not get my objection in.

Mr. MASON. I can't see you. You are behind the stenographer, and I can't see whether you are going to object or not.

Q. Now, in the affidavit which you executed for Special Agent H. T. Jones, Mr. Mason, I believe you have testified it has set out very fully the substance of the conversation you had with Mr. Jones. This is the manuscript affidavit?—A. Yes, sir.

Q. Government Exhibit 18?—A. Yes. [Witness examines paper.]

Q. And that you discussed the matters fully and frankly with him concerning your coal entry and all you knew about it at that time?—A. Yes, sir.

Q. Now, this affidavit bears date August 5, 1907. Did you at that time have any knowledge of those Guggenheim transactions?

Mr. GRAY. Object, for the reason that upon the face of the affidavit it appears that he did have.

The COMMISSIONER. Read the question.

(Question read.)

Mr. GRAY. I don't think it is material.

The COMMISSIONER. Well, I think in view of the statement made by the witness, that he stated all that he knew and was frank with the special agent at the time he took the affidavit, I think that would be material—that answer as to whether he did state all that he knew. This is on cross-examination.

Q. Now read the question to Mr. Mason.—A. I think I understand the question.

Q. Very well. Answer it.—A. Yes.

Q. Did you at the time you executed this affidavit for Mr. Jones discuss what you knew of that matter fully with him?—A. Yes, sir.

Q. You did not, as you recall, attempt to hold back anything concerning that transaction when you were discussing it with Mr. Jones?—A. No, sir.

Q. Between the time that you made your location on your coal claim in Alaska and down to and including the time of final certificate, what attorneys, if any, did you consult concerning your claim?—A. Well, at the time that the May meeting was held in Finch & Campbell's office Mr. Wakefield was attorney for Finch & Campbell and matters were referred to him, and I went to his office with this affidavit which I made for Mr. Jones. At the time the affidavit came to me for signing, I have forgotten which one it was—it was one of those you showed me awhile ago, I was trying to hunt up Mr. Peel. He was out of the city, and his friend was his attorney, and the gentleman told me that Mr. Peel's father had his power of attorney, and I showed this affidavit to him; that is, Mr. Nuzum, and he advised me I couldn't sign them without purchasing Mr. Peel's interest—

Mr. GRAY. That was the Love affidavit—

A. (Continuing.) Inasmuch as I had voluntarily excepted it from the purchase to that time. Outside of that I don't remember of having consulted with any other attorney.

Q. Mr. Wakefield and Mr. Nuzum, they were the two?—A. Yes.

Q. Were you at any time from the time of location of your coal claim down to and including the time of final certificate financially interested with any of the other entrymen in this group?—A. Possibly during that time I was interested with Mr. Finch and Mr. Campbell in some mining enterprises. I rather think I was.

Q. Are you at the present time?—A. At the present time—

Mr. GRAY. I object to that as immaterial. I will withdraw it. Go on.

A. Yes; at the present time I am interested with some of the gentlemen connected with these entries in various propositions.

Q. Name them.

Mr. GRAY. I object, as immaterial.

The COMMISSIONER. That objection is sustained.

Mr. SHERIDAN. I submit, Mr. Commissioner, that since he has answered the question I might get the names of the parties.

The COMMISSIONER. The answer was immaterial, and it can be stricken from the record.

Mr. SHERIDAN. I also wish to state on the record at that time that I consider material, with all deference to the ruling of the commissioner—

The COMMISSIONER. Very well; you have that right.

Mr. SHERIDAN (continuing). The matters that have occurred in connection with this transaction down to and including the time of the issuance of patent.

The COMMISSIONER. Provided you can connect them and will make an avowal to me that I can insert on the record afterwards that you can connect them with any transaction that has gone before where it relates to the charges that have been formulated by the Government. This is, to my mind, wholly immaterial. It is encumbering the record with a matter that is clearly outside of it.

Mr. SHERIDAN. I submit that I can not show to either the commissioner or to the General Land Office whether or not the matter can be connected until I am allowed to ask questions about it.

Q. Approximately how much did you spend on your claim, Mr. Mason, down to and including the time of payment for it to the Government?—A. I think it was somewhere between \$2,500 and \$3,000; something like that.

Q. Did you at any time have any conversation with Clarence Cunningham or any other of the entrymen now concerned concerning the location of scrip on timber lands in Alaska?—A. I don't remember having had any conversation. I received some reports and letters from Cunningham which referred to the proposed issuance of scrip to take up timber.

Q. That is all you know about it?—A. That is all I know about it.
Mr. SHERIDAN. That is all.

Redirect examination by Mr. GRAY:

Q. Mr. Mason, you say that you first became interested in the early part of the year 1903 in having a coal claim located for you by Mr. Cunningham?—A. I did.

Q. And at that time you talked to Mr. Cunningham about the matter?—A. Yes, sir.

Q. At that conversation that you had with Mr. Cunningham state what the facts are as to whether or not you discussed with him any methods for opening the coal claim which was to be located for you?—A. No, I did not. I simply gave my consent to take up a location for us, and did not go into details at all.

Q. Did you, at that time or at any time afterwards before you paid the Government for that land, discuss with Mr. Cunningham the method by which your coal claim was to be opened or developed or operated?—A. No, I don't recollect of having done so.

Q. When you first went into that, Mr. Mason, you say you were somewhat doubtful as to whether or not it was a good proposition to put any money into or not?—A. I was.

Q. And what were your reasons for that?—A. Well, I considered it a very remote district and as I understood from Mr. Cunningham the locations were some distance from the ocean. I knew nothing about the quality of the coal at that time and considered it entirely a gamble, pure and simple.

Q. At that time did you give any consideration to the method by which you were to acquire title to the land?—A. No, sir.

Q. Now, Mr. Mason, had you at that time—Mr. Cunningham told you, did he, that there were certain other persons who were going to authorize him, or had authorized him, to locate coal claims for them in that district?—A. Yes; I think he did.

Q. And some of them were men whose names you knew and with whom you were acquainted?—A. Well, I of course had heard of the governor of the State, Miles Moore, although I was not personally acquainted with him.

Q. Prior to agreeing to go into the thing, or having Mr. Cunningham locate a claim for you, did you discuss the question with any of these gentlemen?—A. No.

Q. Or with anyone other than Mr. Cunningham or Mr. Peel?—A. No.

Q. Now, again calling your attention to that date when you made that power of attorney and affidavit, in October, 1904—October 21, 1904—had you, prior to that time, Mr. Mason, given any consideration to the means or method by which you would operate, open, or develop your coal claim?—A. Not that I recall of. The matter was of minor importance and seldom entered my mind until reminded of it by some draft from Mr. Cunningham.

Q. Had you in the meantime discussed with any of the others who had authorized Mr. Cunningham to locate claims for them in Alaska, the question of how you were going to develop your coal claim up there, or how they were going to develop their claim or claims?—A. I don't think that that question has ever come up, although I have had some casual conversations probably prior to that. I don't recollect exactly, but I would often meet Mr. Campbell in the club, or Mr. Finch in the store, and Mr. Collins and Mr. Neill. I remember when Mr. Neill came back from Alaska and made the report, that Mr. Campbell said that the properties looked pretty fair and the coal was pretty good quality, and he said he thought it would be a good many years before we would get any benefit. Probably our children or grandchildren would be benefited eventually, but, in his judgment, it would be very remote. That was the conversation between us to that effect.

Q. You understood that, however, did you, clear down to the time of securing final certificate of purchase?—A. Well, I think when that Hawkins report was received it rather impressed me favorably, or rather dawned on me at that time that the matter was of more importance than I attached to it.

Q. Prior to receiving the Hawkins report had you given any consideration to the question of how you were going to develop your claim?—A. Not at all.

Q. Or how you were going to get any money out of it?—A. I very seldom thought of it.

Q. You knew it was situated some little distance away from the ocean, Mr. Mason?—A. Yes.

Q. You had had some little experience in coal mining in this country, hadn't you, or in Canada?

Mr. SHERIDAN. I submit, Mr. Commissioner, that Mr. Gray is testifying.

Mr. GRAY. I will withdraw that question.

Q. Mr. Mason, calling your attention to the time when you paid the purchase price to the Government for that land and received your final certificate of purchase, sometime in the spring of 1907, I believe it was—had you prior to that time considered at any conference with any other of the entrymen the method by which you were going to open or develop or operate your claim?—A. Yes; I think—

not at any conference—but in casual conversation with them I think I did.

Q. With whom?—A. Well, with Mr. Campbell, for instance; Mr. Collins.

Q. What was the substance of what was told you?—A. My impression from this conversation was that the whole success or failure of the enterprise in Alaska depended upon the filling up of the country with people, and the market which we could obtain for the coal, and more vital than anything else, the matter of transportation from the ocean to the mine, and whether we could build a railroad or have a railroad built for us up to the property.

Q. Did you discuss with them the question of your joining in the building of a railroad, or did you expect to assist in the building of a railroad yourself?—A. No, sir.

Q. At any of those conferences was there any understanding of any kind between you and these other gentlemen to the effect that they or any corporation that you were going to form or they were going to form, would build that railroad?—A. I don't remember ever having any understanding or agreement at any time with any of the entrymen. Only the casual conversation and general opinion and hopes of the entrymen was that some day something would materialize by which we could likely form a company and build a railroad and mine the coal. No agreement whatever.

Q. Had you prior to the meeting in May, 1907, ever understood or agreed with any of them that you would join with them in the organization of a company for any purpose, Mr. Mason?—A. I don't think there was any understanding or anything understood particularly about forming a company prior to that meeting.

Q. Was there ever anything said prior to that meeting about forming a company and turning your claims over to it?—A. Not that I remember.

Q. Now, Mr. Sheridan has asked you if at the time you gave this affidavit to Mr. Jones in 1907—on the 5th of August—you frankly stated to him such matters as you were familiar with. Did Mr. Jones ask you questions, Mr. Mason, about the matter?—A. I don't think he asked me any questions any more than he requested me to tell him what I chose to tell him in regard to this entry, and I rather opened myself up and told him I was glad he came here, and was glad the Government was investigating it, and would only be pleased to accommodate him.

Q. Now, did you tell him all the things that occurred to you at that time in reference to the matters he asked you about?—A. I was frank and told him everything I could think of in regard to the matter.

Q. Now, Mr. Mason, I call your attention to some language which you have used in that affidavit. You say, "the popular idea with us is that after we get our titles from the Government we will make an effort to get a railroad to our land so as to get the coal out for shipment. We thought that if it were perfectly legal we would form a company and issue stock for the securing of bonds for the building of a road to this land, but we do not want to do anything that is not regular, or we thought if we could get somebody to take part of the stock and put a railroad in we might do that." What did you mean by that, and what did you refer to?—A. Well, Mr. Jones came here after we had had the May meeting and after the transaction of

the men going to Salt Lake City and returning—and all these matters coming up. The impression I had always gathered, even before they had the meeting at Finch & Campbell's office, as I have stated in this conversation; and at that meeting was that it would be impossible for any one entryman to develop a single claim. It was simply out of the question. It would require a great deal of capital, and it seemed as though the only way it could be done would be, if possible, as I have stated in that affidavit, to form a company and by the issuance of bonds secure sufficient capital to acquire the means to build the railroad.

Q. That was your impression, was it?—A. That was my impression,

Q. From information that had come to you?—A. It was.

Mr. GRAY. That is all.

Recross-examination by Mr. SHERIDAN:

Q. Mr. Mason, you have referred to conversations had concerning the possibility of at some time or other of putting a railroad from the claims down to the coast, such conversations having occurred prior to the meetings set out in Claimant's Exhibits 3 and 4—that is, the 1907 meetings. About how many of those conversations did you have, and with whom?—A. Well, I think I talked it over with Mr. Campbell once or twice in the club; the matter was brought up.

Q. With anyone else?—A. Mr. Finch I think; I had a conversation with him one time in reference to the matter.

Q. Any other?—A. I think Mr. Collins; I met him one time and he talked it over.

Q. Any more?—A. Possibly Mr. Sweeney.

Q. That is all you can recall?—A. Excepting Mr. Neill, when I talked to him, when he returned from Alaska, what he thought of the property.

Q. When did he return from Alaska?—A. I have forgotten. I think it was in the fall of 1903, or early in the spring of 1904, as I remember it.

Mr. SHERIDAN. That is all.

Re-redirect examination by Mr. GRAY:

Q. In any of these conversations with Mr. Campbell or with Mr. Finch or with Mr. Collins or with Mr. Sweeney, was there anything ever said about you joining with them or they joining with you or joining with any other entrymen in the construction of a railroad yourselves?—A. No, sir; not a thing.

Q. Or any steps or plans considered about opening or operating any coal mines of any of these claims or on all of them?—A. No.

Mr. GRAY. I think that is all.

Re-recross-examination by Mr. SHERIDAN:

Q. Your idea in these discussions was merely that you were going to build a railroad and leave it there for all time to come, without doing anything with it, was it?

Mr. HUGHES. I think the question is not proper cross-examination and is a manifest misstatement of the language and testimony of the witness. He has not said anywhere that he had any idea that he was going to build a railroad.

Mr. SHERIDAN. No; he only discussed it. He had no ideas about it. We will concede that. That is all.

(Witness excused.)

HENRY WHITE, a witness produced on behalf of the claimants, being first duly sworn by the commissioner, testified as follows:

Direct examination by Mr. HUGHES:

Q. Give your full name, Mr. White.—A. Henry White.

Q. Where do you live, Mr. White?—A. Wallace, Idaho.

Q. What is your business?—A. I am general manager of the White & Bender wholesale grocery concern, and vice-president of the First National Bank of Wallace, Idaho.

Q. How long have you lived in Wallace, Idaho, or in Idaho?—A. I have lived in Idaho since 1884.

Q. How long in Wallace?—A. I first resided in Murray, and moved from there to Wallace in 1889.

Q. Are you acquainted or were you, I will ask you, prior to the fall of 1904, acquainted with any other of the entrymen who are made defendants in this proceeding; and if so, please state with whom.—A. Prior to what date?

Q. Prior to October, 1904, the date at which you became the locator of one of the claims in controversy, and a matter to which I will call your attention later. I am asking you now, prior to that time with which one of the defendants were you acquainted?—A. Mr. Scofield, Mr. Finch, Mr. Campbell, Mr. Jenkins, Mr. Johnson, Mr. Henry Wick; a number. Probably more. I can't think of their names now without a list.

Q. Where have you known Mr. Wick?—A. Just of his visits from the East in this country.

Q. He was interested in some of the mines in the vicinity of Wallace?—A. He was interested in some of the mines in which Mr. Campbell and Mr. Finch were interested.

Q. Where and in what relation had you known Mr. Jenkins?—A. I had known Mr. Jenkins as a mine operator. He was known for a great number of years, more particular when he was at Wardner. He was superintendent of the Bunker Hill and Sullivan mine, a very large lead and silver property.

Q. Mr. Johnson, you had known by reason of your relation with him in the bank there?—A. Mr. Johnson was president of the bank and I was its vice-president.

Q. Mr. Finch, did you have any business relations with him?—A. Mr. Finch has been, since the organization of the White & Bender Company, its president.

Q. Mr. Campbell, did you have any business relations with him?—A. Well, for a number of years he has been vice-president and prior to this date which you asked.

Q. You knew Mr. Jones as a business man in Wallace?—A. Yes, sir; he is another business man. He has been in business there. I probably have known him for a number of years.

Q. Mr. O. D. Jones?—A. Yes.

Q. Did you know Clarence Cunningham?—A. Very well.

Q. How long and how intimately have you known Mr. Cunningham prior to 1904?—A. I have known Mr. Cunningham very well. Ever since his residence in the country, which was either 1884 or 1885; known him well ever since that time.

Q. Had you been familiar with what he had been doing for the last fifteen years prior to 1904?—A. I had.

Q. For the last ten years at least prior to that time?—A. Yes.

Q. You had known him at that time about twenty years, hadn't you; 1904?—A. Well, I had known him ever since his residence, which was not later than 1885.

Q. In what business had he been engaged during most of the period of your acquaintance with him?—A. Mostly mining.

Q. Mr. White, I show you from the original files of the Government in coal entry No. 6, a power of attorney purporting to be signed by you under date of October 8, 1904, and ask you if that is your signature [hands witness paper]?—A. It is.

Q. I also call your attention to an affidavit purporting to have been signed by you under the same date, and attached to the power of attorney just mentioned, and ask you if that is your signature [hands witness paper]?—A. It is.

Q. Now, Mr. White, prior to the execution of the two papers I have just shown you, what information or knowledge had you had in respect to this coal field and in respect to what Mr. Cunningham was doing in the way of locating a claim for himself or any other persons? Just state what information you had prior to that time.—A. I had known that Mr. Cunningham was in Alaska and that he had made some locations, I think, in the spring of 1904. Mr. Neill and Mr. Davenport went to Alaska, and I understood that they were entrymen.

Q. Pardon me. It is not very material, but I think the fact is they went there in the late summer or fall of 1903?—A. Yes; it probably was.

Q. It is not a material matter, except for the purpose of refreshing your memory. You may have seen them as late as the spring of 1904?—A. Yes.

Q. You knew both of these men, did you?—A. Very well. Mr. Davenport had been cashier of our bank. Mr. Neill at the time was one of the directors of the bank. From them I learned that Mr. Cunningham had located coal up there.

Q. You learned something about—A. (Continuing.) —And they advised me that they believed in some far away time it was something that would have a value. Probably at a remote time, if I could be located there, they advised.

Q. Did you have any opportunity to get a location prior to the time when you executed these papers I have shown you?—A. Well, I knew of it but did not request—I probably could, had I have tried.

Q. Did you have any conversation with Cunningham in relation to the matter prior to signing these papers?—A. None whatever.

Q. How did you come to sign the power of attorney and affidavit for the purpose of obtaining a location yourself?—A. I became aware that there was some open ground—in other words, ground that had not been located—and was requested to make a power of attorney.

Q. Do you recall now how you got that information; how you learned that there was open ground, upon which you might secure a location?—A. Either from Mr. Finch or Mr. Campbell, I am quite sure; but I won't be positive.

Q. Well, did you communicate with Mr. Cunningham and ask him if he would locate a claim for you?—A. I did not know his address and therefore I did not.

Q. How did you secure these papers, that is what I am trying to get at?—A. Well, I secured them in just the way I have stated; that

I think I got the information from Mr. Finch or Mr. Campbell, and was requested to make a power of attorney: that they had in some way—was aware that there was open ground and I could have Mr. Cunningham locate it.

Q. Well, did you communicate with them or Mr. Cunningham, or did you indicate your wish to have them, have him send you the papers, or how did you get these papers?—A. That is the way. I got them through Mr. Finch and Mr. Campbell, and not through Mr. Cunningham.

Q. They were subsequent to that time—these papers were sent to you to be signed, were they?—A. Yes, sir.

Q. Now, in any conversation you had with either Mr. Finch or Mr. Campbell, or any other person, was there anything said about whether Mr. Cunningham was to have any interest in this claim after you located it?—A. There was not.

Q. Or about any plan or purpose of organizing a company at some future time, and of transferring your claim, with the claims of the other entrymen, to that company?—A. There was not.

Q. Was there any discussion that you had with anyone or any writing of any kind from which you understood that in making this location anybody would have any interest in it or control over it, or any writing respecting it directly or indirectly, except yourself?—A. No, sir; none whatever.

Q. You make the statement in the affidavit made on the day of October, 1904, "That you make entry for your own use and benefit, and not, directly or indirectly, for the use and benefit of any other party." I ask you, Mr. White, for the purpose of meeting the inquiry here under consideration, whether there existed any writing, or had prior to that, bearing upon any conversation between you and any other person by which you or any other person might infer that if you made a location and acquired title to a claim that you should be under any obligation, express or implied, to join that claim with the claims of other persons represented by Mr. Cunningham, or any other persons whomsoever, for the purpose of forming a company to own and operate the property, or for the purpose of operating it by association, or for combining in any way in the future operation of the property?—A. Is that the question?

Q. Yes.—A. Certainly not; none whatever.

Q. I ask you, and intend my question to be just as sweeping, and I want you to give it your answer, whether there was any conversation, writing, or act within your knowledge from which you or anyone else might infer that when you acquired this claim, or at any time after your location, any person other than yourself would have any interest in it, or any dominion or control over it, or any interest in the proceeds of the operation and development and mining of any mineral deposit in it?—A. There was not.

Mr. PUGH. I wish to enter an objection to that question as it calls for a conclusion of the witness.

Mr. HUGHES. I have purposely put it that way because it occurred to me in view of some of the cross-examination that it was proper to search the witness fully in respect to that and even though he did not understand or was conscious that any other man might have drawn such an inference I want him to say so.

Mr. PUGH. That would be his conclusion merely.

Mr. HUGHES. Yes, possibly.

Q. Mr. White, at the time that you signed these papers or about that time were you advised as to what it would be necessary for you to pay at the time in order for this claim to be located for you?—A. I was.

Q. What was that amount?—A. \$1,600 I think. It was either 15 or 16. I think it was 16.

Q. Did you send the money to Mr. Cunningham?—A. I sent it to Mr. Finch & Campbell, or Mr. Finch, or Mr. Campbell, I think. I did not know Mr. Cunningham's address at the time, with the understanding that it was to be forwarded to Mr. Cunningham.

Q. Were you credited by Mr. Cunningham with the payments of it?—A. I learned afterward; yes, I was.

Q. Mr. White, what was your understanding at that time in respect to the compensation of Mr. Cunningham at the time you made this payment of \$1,600 for any services in connection with the location of this claim at that time?—A. Well, I understood that the \$1,600 would pay a part of the general expenses; traveling expenses; Mr. Cunningham's salary. For I have pioneered myself and I was perfectly aware of the large expense of going into that kind of a country. It was for the general expenses, cutting the trails, building the cabins, and all those requirements.

Q. Will you read my question? I don't think that you have answered the question yet.

(Question read.)

A. I thought that the question put to me was what the \$1,600 was for. There was not anything said about any compensation for Mr. Cunningham.

Q. Well, did you understand that the \$1,600 included any compensation for services rendered by Mr. Cunningham up to that time?—A. I did; yes, sir.

Q. Subsequent to that time did Mr. Cunningham from time to time make drafts upon you?—A. He did.

Q. Did you pay them?—A. I did.

Q. Did you receive any statements of account from him after that time?—A. Yes, sir.

Q. What understanding did you have with respect to how he was being compensated for any services he was rendering in looking after the protection and carrying forward to patent of your claim?—A. Well, in his statements there were items of salary which were his. I don't know the amount, but that was an item charged up among the items of expense.

Q. Mr. White, I now show you from the same files what purports to be an application for patent, which is sworn to before M. J. Flohr, a notary public, on the 29th of January, 1906, and I ask you if that is your signature [hands witness paper]?—A. It is.

Q. In this application you made, among other things, the following statement: "I make entry for my own use and benefit, and not, directly or indirectly, for the use and benefit of any other party." I ask you what is the fact as to the truth of that statement at that time?—A. That is true.

Q. At the time you made this affidavit, this sworn application for a patent, or at any time prior thereto, had you any understanding with Mr. Cunningham or with any of the entrymen or locators

whom you had known or met in the period intervening between the date of your power of attorney and the date of this application that anybody should have any interest in this claim, directly or indirectly, except yourself?—A. I had not.

Q. Have you had any conversation with either Cunningham or anyone else in respect to the organization of a corporation at any future time which should take over this claim, with other claims, or in respect to joint operation of this with other claims, or to mine, or with respect to your holding this property for the purpose of joint ownership or joint operation or use or joint benefit in any way?—A. No, sir.

Q. I now show you, Mr. White, an affidavit purporting to have been signed by you, signed and sworn to by you on the 19th day of December, 1906, which is contained in the same government files, being an affidavit which has been commonly denominated in these proceedings as the Love affidavit, and I ask you if this is your signature to that affidavit [hands witness paper]?—A. Yes, sir.

Mr. HUGHES. Here is a messenger from Judge Whitson, who asks if I can be excused for five minutes. He wants to see me. I don't know what it is about, but I apprehend pertaining to a matter on appeal which was decided in our city some time ago. I presume that it is. I don't know what else it could be.

The COMMISSIONER. We will excuse you. We will take a recess for five minutes.

Q. In this affidavit, Mr. White, you make the following statements, and I read them all over again for your consideration: "That said location was made for the sole use and benefit of affiant and has ever since so remained his and in his exclusive control, and at no time prior to location, or at such time, or since, has affiant entered into any agreement, express or implied, or pledged himself by promise or otherwise, express or implied, by which the title to said land or any part thereof or any interest therein is to pass to any other person or association whatsoever; that in event said claim goes to entry in the United States land office at Juneau, Alaska, that receiver's receipt for the purchase price issues, he will not be under any contract, promise, or obligation to sell or convey said tract to any person or persons or association or to put the same into any company or joint holding for any purpose or otherwise dispose of same, but will be free in every way to hold said tract to lease or sell it at any future time." I will ask you, Mr. White, now, while you are upon the witness stand, where you may be cross-examined, whether each of those statements so made was your understanding by you at the time, and whether each one of these statements are literally true?—A. Each and every one were absolutely true.

Q. Subsequent to the making of that affidavit, did you send to the receiver of the United States land office at Juneau, Alaska, the purchase price payable to the Government for a patent to that land entered on the location that you made?—A. I did.

Q. How much money did you send the receiver and how did you send it?—A. \$1,600 to our correspondent at Seattle; I mean the bank's correspondent.

Q. Through your bank, the First National Bank of Wallace?—A. Yes, to our Seattle correspondent.

Q. You sent forward the money through your bank's correspondent, the National Bank of Commerce, and the money was sent to the receiver at Juneau?—A. Yes, sir.

Q. Did you ever receive from the receiver of the United States land office a receipt for this money?—A. I did.

Q. I show you the receiver's receipt, being a duplicate receipt, contained in the files of coal entry No. 6, and ask you if you received a duplicate of this instrument from the receiver of the United States land office?—A. I did.

Q. I ask you whether you also received a duplicate of the certificate of registry bearing the same date, March 13, 1907?—A. I don't think I did.

Q. You don't remember that?—A. I don't remember that.

Q. Now, at the time of sending the money for your coal claim, and up to the time of receiving the receipt from the receiver of the United States land office, and at all times prior thereto, I will ask you to state whether there has ever existed any understanding or agreement, express or implied, between you and your agent, Mr. Cunningham, or between you and other entrymen represented by Mr. Cunningham, or between you and any other person that anybody but yourself should ever have any interest whatever in your claim, directly or indirectly?—A. No; there was not.

Q. By that answer you mean to testify that there was no understanding, express or implied, that your claim was ever to be at some future time turned over to a corporation or association or holding company, or held for or in conjunction with others for the purpose of operation as a mine?—A. I do.

Q. Had you been present at the meeting which has been mentioned by one or two of these witnesses in this case as having been held in the month of June, 1905, where there were some four or five people present, and the subject of employing a man as a coal engineer to go up to Alaska and investigate and report upon the formations and conditions in that district, at the time that that was under discussion?—A. No, sir; I did not attend that meeting.

Q. Do you remember whether you knew anything about that meeting either then or subsequent to it?—A. Subsequent to it I knew something of it.

Q. What did you know, or how did you know anything about it?—A. Only by what—I can't say whether I heard it from Mr. Johnson or Mr. Jones; but it was understood.

Q. Your learned that some one had gone up there and made an examination?—A. Well, I learned that someone had gone up there.

Q. You subsequently received a copy of this report of this engineer, Mr. Hawkins?—A. I don't think I received that report, but there was one. I had one. Mr. Johnson or I had one in our office, known as the Hawkins report.

Q. Oh, did you see that report?—A. I saw that report.

Q. Subsequent to your final certificate being issued, were you present at any meeting with any other of the entrymen at which any discussion was ever had affecting the question of the organization of a company or any joint operation?—A. No, sir.

Q. You were not present at that kind of a meeting?—A. No, sir; I was not present.

Q. You don't know whether you authorized anyone to represent you or not?—A. No, sir; I did not.

Q. I show you this Exhibit 3, which purports to be a record of the proceedings of that meeting as reported by Mr. Burbidge, secretary, and ask you whether you were presented with a copy of it.—A. I was not, from my knowledge. I have never seen it before.

Q. Were you informed that such a meeting had been held, and that there had been a committee appointed to take up the question of organizing a company? Did you learn about that? To refresh your memory, I will ask you if you ever heard anything from Mr. Wakefield or was called upon to make a deed.—A. I was.

Q. Did you make a deed?—A. I did; yes.

Q. Now, prior to that time, had you learned anything about the appointment of this committee and the fact that there had been such a meeting and what its purpose was?—A. Yes; I had.

Q. You made a deed and sent it to Mr. Wakefield in compliance with his request?—A. Yes, sir.

Q. Now, I call your attention to Claimants' Exhibit No. 4, and ask you if you were present at that meeting.—A. I was not.

Q. I notice that this record states that there were represented by proxy a number of people, and among them there is the name of White, but without any initials; does that refer to you?—A. I think I was the only White that was an entryman, but I don't remember of ever having sent a proxy at this time, but if it is there I probably did.

Q. Do you recall now or have any present recollection whether you had any notice of this meeting?—A. No, sir; I can not.

Q. Well, did you learn of the action taken at the meeting subsequently?—A. I did.

Q. Do you recall whether it was by receiving a copy of the proceedings of the meeting or by word of mouth?—A. It was by word of mouth; I don't remember.

Q. Do you recall from whom you learned it?—A. I could not do that.

Q. You simply remember you obtained this information?—A. From Mr. Jones or from some one.

Q. That a committee had been appointed to go to Salt Lake City?—A. Yes, sir.

Q. And did you subsequently—now, did you receive a copy of the proposed agreement or option that was drawn up at Salt Lake City at the time this committee had its conference with Mr. Eccles?—A. Yes; I did.

Q. Now, I will show you Government Exhibit No. 10 and ask you if you recall that exhibit, as to whether or not you have received this, or a duplicate of that.—A. Yes; I had a copy of a memorandum like that, and this was a copy of that agreement.

Q. And did you consent to the terms of this agreement or to convey your claim to any person, or to being bound in any way by it?—A. Well, it had never arrived at that place. There was a number of my business associates that I had considered good business men, and myself and Mr. Johnson talked the matter over after this, and I know I did not think it a good contract.

Q. Do you remember ever having any discussion with any of the entrymen who protested against it, and if so, with whom?—A. Well, I think Mr. Jones, and I think Mr. Burbidge, but not anything at a meeting, but only in a casual way.

Q. When you happened to meet them personally?—A. Yes; met them personally.

Mr. SHERIDAN. Which Mr. Jones?—A. Mr. O. D. Jones.

Q. Did you express either approval or dissent to the proposition, according to the terms of that instrument?—A. I did. I did not like the contract.

Q. Did you learn subsequently what was the fate of this proposition—the tentative proposition?—A. I did.

Q. What information did you have in that respect?—A. Well, that there were not enough entrymen who would agree to the proposition and the thing fell down, and my deed was returned to me, and I destroyed it.

Q. Do you remember whether you requested its return, or it was sent you by Mr. Wakefield at his own instance?—A. I think it was sent by Mr. Wakefield without a request.

Q. Mr. White, subsequent to the time referred to in the testimony you have hitherto given, were you visited by anyone claiming to be a special agent of the Government?—A. Yes; I was.

Q. I now show you a paper purporting to be an affidavit, which I hand you, and I will ask you if that is your signature? [Hands witness paper.].—A. Yes, sir.

Q. This instrument bears date March 5, 1908. I now ask you, Mr. White, to explain or state all that transpired at and preceding the making and signing of this affidavit?

Mr. SHERIDAN. What number is that?

Mr. HUGHES. The instrument referred to being Government Exhibit No. 12.

A. Two gentlemen walked into my office one day—I don't know whether it was in the forenoon or in the afternoon—they walked back to the office, and I was in the inner office, and they walked in and asked if I was Mr. White, and I said I was, and one of the gentlemen said, "I am Mr. Glavis." And he turned around and introduced me to Mr. Jones.

Q. This gentleman here [indicating Mr. Horace Tillard Jones]?—

A. Well, yes, I presume he is the same gentleman; I would not remember him; he has changed; he has since grown a mustache or something; he is changed somewhat. I don't know whether or not that is Mr. Jones, but I did not know Mr. Glavis; I have understood that this is Mr. Jones. Mr. Glavis did all the talking. He started out by saying they were representatives of the Interior Department—General Land Office—but before that he asked me if I was one of the entrymen in the Cunningham coal claims, and I said I was, and he started out by telling me who they were, that they were representing the Interior Department and the General Land Office, and that the department was going to require another—still another affidavit. I don't just remember the language, but something that they were required to complete the files to bring about the issuance of these patents, that it would facilitate matters very much, and that all the entrymen, that he was seeing them all, that they were all making an affidavit—all very plausible and nice, and it sounded good, and Mr. Glavis handed me a prepared affidavit for my signature. I read the affidavit and laid it down and I said, "No, I can not sign this." He said, "Why?" "Well," I said, "because it would be untrue." He says, "What part of it?" I said, "All this here about my having any

agreement to form a corporation subsequent to patent; that is not true; I have not got any agreement with anybody." "Well, the other entrymen have signed this." "Well, I can not help what they did; if they have, it is not true." I says, "I am one of the entrymen, and they have not got any contract or agreement with me. That affidavit won't go." And he produced some—whether he did, or Mr. Jones, I would not say—but they produced some blank paper, if my memory serves me right. Mr. Jones did the writing and Mr. Glavis did the dictating, and after they went through one attempt, I think there were two affidavits destroyed or taken away; but in the dictation, in the new one having the regular heading of the form of the affidavit, it had got quite well down into it, the phrasology was changed from the other one by starting in with saying, or dictation, rather, "I have no written agreement, but an understanding that after the issuance of patent we will form a corporation for mutual benefit." I won't say positively the language, but that was about the phrasology used. I said, "Don't put that in there." Mr. Glavis turned around and said, "Why, of course, you have an understanding that after these patents are issued, all the patents, that you are going to be incorporated." I said, "No, we have no such agreement. I have no such agreement." Out of it we got this affidavit here.

Q. This affidavit was then drawn by them, and it was the second one drawn; or was a third one presented to you for signature, and you signed it?—A. Well, I did not sign it at that time.

Q. When, then, was third after this was drawn there?—A. After this affidavit was prepared, and left for signature, I did not know—I was rather undecided whether to sign anything or not, and I requested them to remain there a few minutes, as I said I wanted to consult with Mr. Gray. I did not know. Mr. Glavis said "Isn't this true?" And I said, "That is absolutely, but I don't know who you are; you haven't shown me any credentials to show me who you are;" and he said, "I know Mr. Gray," and I said, "Come right along with me up to Mr. Gray's office," and it was in Mr. Gray's office that the affidavit was signed. Mr. Glavis did all the talking, and I don't think Mr. Jones did any dictating or made any suggestions whatever.

Q. When you say Glavis did all the talking you mean all but what you did [laughing]?—A. Well, I mean on the other side.

Cross-examination by Mr. PUGH:

Q. You first became interested in making a location in Alaska in 1904, was it?—A. 1904; yes.

Q. And it was through conversation with Mr. Horace Davenport and Mr. Neill?—A. No, it was not that; it was from the information which I got from them or from others that there would be a value to the land.

Q. Well, that was what excited your interest in these fields?—A. Yes, that is what excited my interest in these fields.

Q. Now, you subsequently gave to Clarence Cunningham power of attorney to make a location of coal lands for you in that locality?—A. Yes.

Q. Did you ever have any understanding with Mr. Cunningham, or with any other person before him, as to what his compensation was to be?—A. None whatever.

Q. You did not know what liability you were risking in that behalf?—A. It was not talked about.

Q. Nothing was said?—A. Nothing was said.

Q. Nothing was said about giving him a one-eighth interest in the land?—A. No, certainly not.

Q. Had at that time Mr. Davenport and Mr. Neill become interested in the locations?—A. I think that they each one had an interest or a location.

Q. Did they make any representations to you as to what compensations they would pay Mr. Cunningham?—A. They did not.

Q. Did they then, or at any time subsequent, or say, before you made that location, make any representations to you concerning any common plan or purpose for the development or operation of these properties after the title had been acquired?—A. Not any; no, sir.

Q. Were you, at any time prior to the delivery to you of the receiver's final receipt of purchase, approached by any other locator concerning any such common plan or purpose for the development, or common plan, after title had been secured?—A. No, sir.

Q. Did you ever give Clarence Cunningham any power of attorney or authority, written or oral, other than as shown and set out in the paper in the files pertaining to your entry?—A. No, sir.

Q. Did you ever have any meeting or conference with any of the other locators who were known to you, as you have testified, prior to the date of your final receipt, concerning the future disposition of the title which you might acquire, and the titles that they might also acquire?—A. I did not.

Q. Nothing said concerning the formation of any association or corporation of any kind for any purpose?—A. No, sir; there was not.

Q. You knew at this time that the lands which you were seeking to acquire were located in a very remote region, difficult of access, without any present means of transportation and none immediately in prospect, did you not?—A. I did; I knew it was up in the wilderness far from the sea.

Q. You knew they had and would have no value except as a coal-mining proposition?—A. That was my understanding.

Q. And that would depend upon the transportation or the perfection of transportation facilities?—A. Certainly; yes; would not be worth anything without it.

Q. Was it your impression at that time, Mr. White, that 160 acres of coal land up there could be profitably operated by itself?—A. I did not give it any consideration.

Q. You haven't thought of that at all?—A. Had not thought about it.

Q. You had no definite or fixed plan or purpose of any kind concerning the development of that property and the realization of the value or assessment?—A. None whatever—I rather regarded it as an investment.

Q. You did not in any wise contemplate the association of your property with other properties?—A. I did not.

Q. You stated that at the time you made the first payment on account of your location that you understood that included any compensation to which Mr. Cunningham might be entitled, did you

not!—A. I understood it would. There was nothing said about compensation.

Q. How did you arrive at that understanding?—A. Well, I did not know anything about it at the time, but afterwards it appeared upon the reports I got and then in the statement of his salary charge; since that time it has never occurred to me.

Q. Then, at the time you made that payment you had not ever had any understanding whether it would include compensation or not?—A. No; it was not mentioned.

Q. You knew he would be entitled to some compensation?—A. He certainly would, yes.

Q. You have also stated you secured through Messrs. Finch & Campbell the papers necessary to initiate your location?—A. Either through Mr. Finch or Mr. Campbell, I think. I don't know which.

Q. Were you advised then, or did you subsequently learn that Mr. Campbell was carrying more than one location up there?—A. No; I did not know that.

Q. Did you, in that connection, meet Mr. Hussey, or learn of anything that he had?—A. I did not.

Q. Did Mr. Cunningham supply you from time to time with written information concerning the things that he was doing up there in your behalf and for what purpose he was spending your money?—A. He did, sir.

Q. I am going to ask you to examine three or four papers which have been submitted in evidence, the first of which I will now hand you, being marked Government Exhibit 5, and I will ask you to state whether you ever received that paper or one like it.—A. I don't think I did.

Q. Your location was made, if I remember your testimony in chief correctly, subsequent to the date that this paper is dated, which is February 29, 1904, was it?—A. Yes, sir; it was some time in 1904.

Mr. HUGHES. The date appears from the power of attorney.

Q. I now ask you to look at this paper which I now hand you, being Government Exhibit No. 6, and I will ask you to state whether you ever received that paper or one similar to it.—A. Yes; I have had that or a copy of it.

Q. Did you read and carefully consider the contents of this paper at the time you received it?—A. Yes; to some extent; I read over it.

Q. Wasn't your attention then attracted to the fact that in speaking of the properties Mr. Cunningham used the plural possessive pronoun "our," and in speaking of the operations that were being carried on used the plural pronouns "we" and "ours" also?—A. It did not occur to me. I would not place any significance on such language.

Mr. HUGHES. Why not, if counsel will permit me to ask that question now?

A. I would employ the same language myself if I were in the same business as Mr. Cunningham was. He had a coal claim there, and I had a coal claim there, and it would be perfectly natural in writing to me for him to use the word "we" here. I would regard it as much if I were on the ground. That never—did not occur to me—never had occurred to me until I heard about it in the papers during this hearing or the question brought up.

Q. Now, Mr. White, I will ask you how you were, at that time, impressed with this language and with this form of expression contained in the second paragraph of page 2 of this paper: "We are thus brought to that portion of our land lying between Trout Creek and Clear Creek, where the measures are unbroken and developed sufficient to show 100,000,000 long tons of coal above the tunnel level we have projected, all of which can be mined from one tunnel, and we know that the adjoining ground, not reported upon, also contains as much more?"—A. I heard something about a tunnel afterwards, but whether it was before or after that I don't know. I had understood that at this place that this was only in the way of a general development. That would be my way of regarding it, and for that purpose I would be perfectly willing to contribute anything that would benefit in that general way the exploration, to explore the country, to find the different dips, spurs, and angles, and all that same thing in connection with the coal, as to how it was laying and the course of its seams.

Q. You knew you had only 160 acres of land?—A. I did.

Q. And when he spoke of "our ground lying between Trout and Clear creeks" did you understand that was your 160 acres?—A. My claim is on Clear Creek, I think.

Q. But you did not have any idea, did you, that your claim lay on both these creeks?—A. No.

Q. Or stretched out between them all the way?—A. No.

Q. Or that your land alone contained 100,000,000 long tons of coal?—A. No.

Q. The next succeeding paragraph says: "Mr. Hawkins finds four of our claims of but little value for coal, so far as can be ascertained at the present time, but as they contain heavy timber, recommends their being held for that purpose. I have located four other claims on the dip of the coal measures, so no one will be any the loser thereby." How did that impress you, Mr. White?—A. Well, at the time I did not know just what claims they were.

Q. You did not know what four claims he referred to as "four of our claims"?—A. No; I did not know what claims they were.

Q. You don't know whether your claim was one of them or not?—A. Not at that time.

Q. The first paragraph of the next succeeding page contains as follows: "You are already advised we are holding considerable tract of land for timber, which we will require in large quantities. There is no law in Alaska for acquiring the title to timber lands, and consequently would consider it justifiable to try to secure some cheap scrip and cover all we can before beginning any very extensive operations." What was your understanding of that statement?—A. At that time I did not understand it. I learned afterwards about it, though.

Q. Did you in any way get the idea that Mr. Cunningham was laboring under the impression that he was representing an association of persons?—A. Not at all.

Q. You never asked Mr. Cunningham what he meant by those things, did you?—A. I did.

Q. Did he make any explanation to you?—A. He did.

Q. State what that explanation was.—A. In reference to what you have there?

Q. All of these last questions that I have read to you about the four claims being found to be of little value by Mr. Hawkins and would—

Mr. HUGHES. Just put them one question at a time, so he can make an explanation. One relates to one matter and one to another.

A. The first time I met Mr. Cunningham after the receipt of this letter I said: "Clarence, whose claim is that that is to be designated—whose claims are they to be designated as timber lands?" "Oh," he said, "they are not yours. Yours are above that; that timber is in the lower tier of claims."

Q. Did he explain to you for whom he proposed this should be held, for whose benefit?—A. No; I do not think he knew whose claims they were, myself, at the time.

Q. You have not answered my question.—A. I beg your pardon.

Q. I say, did he explain to you for whose benefit he proposed to take and hold them?—A. He did not.

Q. Now, in respect to the statement which was read to you from page 3 in regard to the acquisition of timber lands, did he make any explanation to you in regard to that statement?—A. He did; yes, sir. He came to me—he asked me—I didn't ask him about it. There was some valuable saw timber adjacent to the claims up there—

Mr. HUGHES. You say he said there was?

A. Yes; he said there was, and that the only way that title could be secured was to scrip the land. I knew the development of Alaska, and the development of that whole country would require timber, and that the demand for timber would be a very good one in the future, and we talked the matter over, and I agreed to take some of it, with the understanding that the scrip would be of the proper quality. I think the term used—I don't know much about scrip—was to be approved scrip, so afterwards there could be no question as to the title. I was aware that the city of Wallace had scrip afterwards found to be faulty, and revoked, and they got into a big lawsuit over it, which I did not care anything about and I was not looking for.

Q. Well, did you propose that he, then, or that you acquire some particular tract of land, or did you go in there with other persons or associate yourself with other persons for the acquisition of tracts of timber he mentioned here?—A. No, sir; it was my own personal investment.

Q. Is that a single tract?—A. The amount had not been designated. That was to be designated by the value of the scrip, because I did not know how much of an investment I wanted to make, and I could not ascertain that without I found out what the scrip cost.

Q. You were to have no associates in that investment?—A. No; not any. It was particularly a personal investment.

Q. I have here two more papers which are submitted in evidence marked "Government Exhibits 8 and 9," and I will ask you to examine those and state whether you received those papers, or copies of them.—A. Yes; I probably did.

Q. When these papers came into your possession, did they, with the previous statements that you had received, indicate to you that Mr. Cunningham was keeping a common account for all of you, and making expenditures from that common fund for the benefit of all of

you?—A. I did not scrutinize the account, and I did not figure out the amount of the cost.

Q. You did not see any separate account being kept for you?—A. There was no account.

Q. There was no separate account kept for you?—A. Naturally the items of the amount of payments I was making that was shown upon this statement.

Q. I want to call your attention to this language in Government Exhibit 9, on the second page, reading as follows:

Railroad and terminal account has been increased by new surveys found necessary. This will be explained in accompanying letter. Timber-land account consists of survey made in full 1,600 acres of timber land adjacent to our coal claims. It is our intention to secure title to this land by soldiers' additional homestead scrip, which has been approved. Water-right account is sum expended for water right at Lake Kushtaka for power purposes.

Did you know anything about that account you have mentioned there? Were you ever shown them by Cunningham, or did you ever ask him for any explanation?—A. No; I never asked for any kind of an explanation. I might say, I have known Mr. Cunningham for so long and I had such an opportunity for knowing him in so many phases of his character and his habits; he was a man who was a very impulsive, bright man, and had an active mind, and he was up in that country alone, practically so, probably in the association of Indians, and on the receipt of these things here, knowing him so well as I did, I regarded this as—well, as being visionary you might say, more than anything else. He did not have any power of attorney to in any way act for me for all this timber and railroad building and all that sort of thing. All that he had to do for me was to bring through to patent my claim; he simply had a power of attorney to perform that one act, and outside of the expenditure of money for something that was to aid my particular ground or claim and benefit that was all there was or was all that I considered in my mind.

Q. You were full of trust and confidence, and didn't think any explanation was necessary?—A. I did not pay any attention to it. I thought it was one of his great big ideas, and the mere fact that was coming to me I paid no attention to it. I regarded it as visionary, and that is all I thought of it; that is it exactly. I did not have money to go into all those sorts of things, and I paid no attention to them.

Q. How long did your conference with Mr. Jones and Mr. Glavis continue?—A. How long did it continue?

Q. At the time you executed the affidavit you have identified here?—A. Oh, some little time. We were in the office some little time and went to Mr. Gray's office from there, and immediately after signing it I left that office.

Q. You stated that you rejected the first two drafts which they presented to you?—A. I say that I am not positive as to whether there were two or three.

Q. You did sign?—A. I did sign an affidavit.

Q. And swear to the one here in evidence?—A. Yes, sir.

Q. And you also stated before you signed this that you went with Mr. Glavis and Mr. Jones to the office of Mr. Gray?—A. I did.

Q. Did you there further consider and confer with him concerning the aspect and import of that affidavit?—A. I did.

Q. And then signed it?—A. Yes, sir.

Q. You yourself found no language in it that was not of plain meaning—A. Certainly not, because I expressly dictated it myself.

Q. And there was no statement contained in it that you did not understand?—A. No; there was not.

Q. And you were not persuaded by any misrepresentations made to you by Mr. Glavis and Mr. Jones concerning the making of this affidavit?—A. It was my own affidavit that was signed. The others were framed up—I won't say the others were framed up either. They came to me already prepared.

Q. Did Mr. Cunningham, as your attorney in fact, ever advise you as to the extent and character of the improvements which he had created on your coal-land location?—A. He did.

Q. Do you remember what he said to you those improvements were, and if so, state as near as you can what he said?—A. No; I can not say as to any more than I had understood from Mr. Cunningham that there was cuts, plenty of coal developed, which I found afterwards on the map.

Q. Any tunnels, so far as you can recall?—A. I don't think there is; I don't know whether there is or not.

Q. The work was confined to open cuts and trails?—A. Well, I could not say as to that, but I know there was coal exposed.

Mr. PUGH. I believe that is all.

Redirect examination by Mr. HUGHES:

Q. When you say you knew there was coal exposed, you mean that you were informed by Mr. Cunningham that that was a fact? You were never there yourself?—A. No; I never was there myself—

Mr. HUGHES. Now, I would like to have you wait until I finish the question. Otherwise you answer a question wrong. For instance, you were asked by Mr. Pugh whether you consulted with Mr. Gray about the language of this affidavit, and advised with him before signing it; and hence now I want to ask you:

What is the fact, referring to your answer—I think your answer there was made in the affirmative before, probably, the question was fully asked by Mr. Pugh. What is the fact about what advice you took of Mr. Gray at the time you went there?—A. I did not take any advice from Mr. Gray then; I did not go to consult him as an attorney.

Q. I think it is not very material to the answer, but the question I want to ask was, that when you arrived at Mr. Gray's office Mr. Glavis and Mr. Gray recognized one another?—A. I stated to Mr. Gray, the gentlemen represented themselves to be from the Interior Department, and here is an affidavit they wanted signed. Mr. Gray said he knew Mr. Glavis; that is all right. If the affidavit is true, there is no objection to signing it. And that was all there was to it. I did not go to him to take any legal advice.

Q. Now, Mr. White, in speaking of the matter of compensation to Mr. Cunningham, in answer to a question which has been propounded to you on cross-examination, I understood you to say that you had no talk with him or anyone else relating expressly to that subject?—A. I did not.

Q. I will ask you at this time when you went into this matter and made your payment, as well as at a subsequent time, before you received your statement showing that he charged the item, if you un-

derstood that the payment—that your payment that you made in the beginning, of \$1,600, and payments made or expected to be made in the future, would include all expenses and embrace the compensation which Mr. Cunningham was to charge for his personal services, as well as what was charged for men employed by him, and other expenses?—A. Yes, sir.

Q. If Mr. Cunningham had taken up the matter with you personally and discussed the question, would you, in the line of your knowledge with him, and your acquaintance with him, if the question of his salary and compensation had come up, would you have left it to him just as you did leave it to him?—A. Yes; knowing him as I do, I would have left it entirely to him.

Mr. SHERIDAN. Mr. Hughes, pardon me for interrupting, but we would like to invite attention to the calling for a conclusion of what a witness would have done and not testifying to what he did do.

Mr. HUGHES. I recognize, Mr. Commissioner, it is always possible to object to a question, but I submit that the time to make an argument is when the case is submitted to the department.

Q. Mr. White, you have been asked questions of what you considered—what your ideas were in the beginning as to the development of this property, and I think you have stated that you did not have any idea on that subject at that time?—A. Did not discuss it.

Q. When you went into this matter, and made this location, what was your expectation with respect to the nature and character of the investment that you were making?—A. The investment?

Q. Well, with respect to the matter, if at all, you might realize upon it, what was your idea?—A. My idea?

Q. Your idea has been called for, and I ask you now to state what it was, if you recall it, at the time you went into it.—A. Well, that it would be ultimately probably quite a valuable asset, and I had spoken to Mr. Johnson, I think, talking about this, that this was going to be something that would require a very large expenditure, and I believed it would be one of the things you want to put away in your strong box and leave for Jack, which is my boy's name.

Q. Now, you say that some time after receiving this Government Exhibit 6 you saw Mr. Cunningham?—A. Yes, sir.

Q. You had conversations with him in which you asked him whether your claim was included in one of the poor claims referred to, and he told you it was not?—A. Yes, sir.

Q. And you also stated that it was at that same time you had the conversation you have described?—A. Yes; the same time.

Q. In that conversation, which I do not care to have you go into further than the question I was about to ask; I don't care to go over the ground again; but in that conversation was there anything said by Mr. Cunningham respecting the idea or the purpose of acquiring these claims, and of your investing money in them with a view of holding them in conjunction with any other entrymen?—A. There was not.

Q. Or for any common use?—A. Not at all.

Q. Was it proposed to you, or considered by you in any other respect than that of a personal investment?—A. It was not.

Q. Referring to these matters which were spoken of here by Mr. Cunningham of this character with respect to the possible construction of a tunnel or other work of that kind, I will ask you whether

you gave them any consideration; and if no, why not?—A. Not serious at all.

Q. Well, why not? That is a part of my question.—A. I didn't want to go into the development of the—

Q. Did you answer that or did you respond to that in any way?—A. Did not respond to that—

Q. At any time?—A. Yes; I did.

Q. What response did you make?—A. While Cunningham was in Wallace he talked about taking an air compressor and machinery up there for the purpose of driving a tunnel, which I expressly objected to, seriously, and refused to take any part in it.

Q. Now, as to the statements of this character contained in this paper, did you consider at the time that Mr. Cunningham was likely to attempt to do anything of that sort and incur any expenditure of that kind?—A. I did not.

Q. Had you ever given him any authority to do so or given him any authority other than that contained in your power of attorney?—A. None whatever.

Mr. HUGHES. I think that is all, Mr. Commissioner, and as it is noon time and time for adjournment, if I think of anything else during the noon hour I want the privilege of asking it. I do not think I shall. I think that is all.

Mr. PUGH. I have just one or two more questions.

The COMMISSIONER. You may proceed.

Recross-examination by Mr. PUGH:

Q. You state that you did not go to Mr. Gray in his capacity as attorney?—A. No.

Q. What capacity did you go to seek and consult with him?—A. Mr. Gray and I are very warm personal friends, and had I wanted an attorney for anything I would have gone to Mr. Gray.

Q. Why did you go to him in this instance?—A. I went to him to find out from him, get his knowledge—knowing that he was very well informed—and to find out who Mr. Glavis was. That was really my intention, to find out who these two men were, Mr. Glavis and Mr. Jones.

Q. Did you show him the affidavit?—A. Yes, sir.

Q. In other words, you knew he was both an attorney and your personal friend, and you wanted his advice?—A. I did not want his advice at all. All I wanted was his recognition of these men.

(And thereupon the further hearing of this inquiry was adjourned until 2 o'clock p. m., December 9, 1909.)

DECEMBER 9, 1909—2 p. m.

INQUIRY RESUMED.

Appearances: Hon. William J. McGee, United States special commissioner; Mr. James M. Sheridan and Mr. William B. Pugh, counsel for the Government; Mr. E. C. Hughes and Mr. John P. Gray, counsel for the claimants.

WALTER B. MOORE, a witness called on behalf of the claimants, after being first duly sworn by the commissioner, testified as follows:

Direct examination by Mr. HUGHES:

Q. What is your full name?—A. Walter B. Moore.

Q. Where do you reside?—A. Portland, Oreg.

Q. What is your business?—A. I am now engaged in the irrigation business in the Willamette Valley.

Q. How long have you been engaged in that business?—A. About two years.

Q. Beginning early in the year 1907?—A. About that time, yes; some time in the spring of the year 1907.

Q. Prior to that time what was your business?—A. Stockholder in the Baker-Boyer National Bank in which my father, Miles C. Moore, is president, and having interests in farms.

Q. Were you engaged in any other business prior to becoming interested in the irrigation project of the Willamette Valley?—A. I have been engaged in the mining business for a good many years, off and on.

Q. Mr. Moore, you are a son, you say, of Governor Moore, a witness in this case, and a brother of Frank Moore, who has also testified?—A. Yes.

Q. Mr. Moore, did you have any conversation with Mr. Cunningham in the winter of 1903 in relation to certain coal measures in what was then known as the "Controller Bay" district in Alaska?—A. Yes, sir.

Q. Where?—A. At Walla Walla.

Q. Who was present?—A. My father.

Q. Had you known Mr. Cunningham prior to that time?—A. Yes.

Q. You may state briefly what conversation occurred there so far as related to these coal measures, and the matter of your taking a claim?—A. Well, Mr. Cunningham came into my father's office and told us that he had been to Alaska and discovered some coal up there and talked the matter over with us at considerable length, and after having discussed it, asked us if we didn't each one want to take a claim there.

Q. What, if anything, did you say?—A. I didn't hear you.

Q. What, if anything, did you say?—A. Why, I was in favor of taking a claim, but my father said he had a friend in Seattle, Mr. C. J. Smith, who was a coal man and had had considerable experience in coal and thought we better wait until he had referred the matter to him, and I think he gave Mr. Cunningham a letter of introduction to Mr. Smith and subsequently he told me Mr. Smith had talked the matter over with Mr. Cunningham and said he thought it was all right.

Q. Did you then notify Mr. Cunningham that you would take a claim; advise him to locate a claim for you?—A. Yes.

Q. Was there anything said in this conversation, Mr. Moore, about the expenses; was the subject of expenses discussed?—A. No; no.

Q. Do you remember anything being said at that time about the amount of money that you would be called upon to advance in the first instance?—A. Yes; he said that he thought it would require something like \$400 or \$500 to make the trip up there and investigate the claims up there.

Q. Do you remember anything being said in that connection about buying off whatever rights certain prospectors claimed there; do you recall that?—A. Yes; he said there were some squatters on this land and they would have to be paid off.

Q. Did he say anything about whether he was going to take a claim himself?—A. Yes.

Q. Locate a claim for himself?—A. Yes.

Q. Anything about whether he was intending to get others to locate through him at the same time?—A. Yes.

Q. Mr. Moore, after learning that Mr. Smith had decided that he would take a claim, did you notify Mr. Cunningham that you would take a claim?—A. Yes.

Q. Did you send him the money that he had indicated he would require in the first instance?—A. Yes; I think I sent him \$500.

Q. What was the next information you had in regard to the matter, do you remember?—A. No; I don't remember the next information I received.

Q. I think it has been disclosed in the testimony of this case that Mr. Cunningham came out again in the spring, after having gone up there, and made some locations, including yours, and that he was at Walla Walla when he saw Mr. Baker. Were you there at that time?—A. Yes; I was there at the time.

Q. Did you see the coal that he had?—A. Yes.

Q. What conversation did you have, if any, with him at that time?—A. I don't remember the conversation I had with him at that time.

Q. Were you present when he was talking with Mr. Baker?—A. Yes.

Q. And heard whatever conversation was there, did you?—A. Yes.

Q. Do you remember now, refreshing your memory, as to things that occurred in that conversation as to whether or not anything was said by Mr. Baker to Mr. Cunningham as to what would be the probable total expense of securing one of these claims?—A. He said he thought the expense would be between \$2,500 and \$3,000.

Q. Now, when was the next time that you saw Mr. Cunningham, that you recall?—A. I don't remember that.

Q. Do you recall whether you saw Mr. Cunningham again prior to the time when you executed the power of attorney to him?—A. Yes; I think that I saw Mr. Cunningham before I executed that power of attorney, but I can't say positively.

Q. In any conversation you had with Mr. Cunningham prior to the execution of this power of attorney, to which I have referred, was there anything said between you and him with respect to his having any interest in the location made for you?—A. No, sir.

Q. Was there anything said in respect to any purpose to ultimately form a corporation and transfer your claim with the claims of the other entrymen to that corporation?—A. No.

Q. Was there anything said from which you understood that in making this location anybody would have any interest in it, directly or indirectly, but yourself?—A. No.

Q. Or that you would be under any obligation to hold it for the benefit of any company or association of persons or of any individual other than yourself?—A. No.

Q. I show you now a power of attorney which appears in the files—the government files—designated as coal entry No. 28, and ask you if the name Walter B. Moore, subscribed thereto, is your signature?—A. It is.

Q. Acknowledged by you on the 29th day of October, 1904, before W. D. Gregory, was it?—A. Yes.

Q. I call your attention to the affidavit attached to the power of attorney and ask you if that is your signature? [Hands witness paper.]—A. It is.

Q. It was sworn to on the 29th of October before the same notary public?—A. Yes, sir.

Q. Mr. Moore, in this affidavit you said, among other things, that you—

Make entry for my own use and benefit, and not directly or indirectly, for the use or benefit of any other party.

Was that statement a true statement at the time it was made?—A. It was.

Q. Do you remember from whom you received the power of attorney and affidavit to be executed? Give your best recollection on the subject.—A. Well, I suppose it was sent to me by Mr. Cunningham. I can't remember.

Q. Did you return it to him after the execution; return both of those papers to him after its execution?—A. Yes.

Q. At the time of executing these two papers, the power of attorney and the affidavit, did you have, or had you prior thereto, had any conversation with any other person relative to the organization of any company which should thereafter take over this claim in connection with other claims?—A. I did not.

Q. Did you have any conversation with any person relative to holding this claim for the benefit of any association or persons, or any other person than yourself?—A. I did not.

Q. You did not have any understanding or agreement, express or implied, with reference to the use, or mining, or operation of this claim in conjunction with any other claims, or pursuant to which anybody should have any interest in the claim itself or in the fruits of operating it?—A. I did not.

Q. Had anything ever been said to you on that subject by Mr. Cunningham, or had any other person?—A. No.

Q. Prior to the date of the signing of this power of attorney and affidavit?—A. No.

Q. Mr. Moore, for the purpose of refreshing your recollection, if, after your conversation with Mr. Cunningham, you had any conversation with your brother Robert with reference to his taking any interest in this claim?—A. Yes.

Q. What was that?—A. I talked the matter over with him and asked him if he wanted to go in with me on this location, and he said that he did.

Q. Did he pay you one-half of this sum you had advanced?—A. He did.

Q. And join with you in making any subsequent payments that were drawn on you by Mr. Cunningham?—A. Yes.

Q. Now, at the time you received, or prior to receiving this power of attorney and affidavit, did your brother Robert still remain interested in any way with you in this matter?—A. I didn't understand the question.

(Question read.)

A. Beginning at the time I made the power of attorney?

Q. Yes.—A. No. Prior to that time I had said to him—no. At the time I received this affidavit and power of attorney to sign I discovered that we both could not remain in the claim, so one of us had to drop out, and he said he would, and so I bought his claim from him; his part of the claim.

Q. And paid him for the advances he had made?—A. Yes.

Q. From that time on did he ever have any interest with you in this matter?—A. No.

Q. And aside from this arrangement that you have stated as having been made with your brother, did you ever have any agreement with your brother that he should have any interest in the claim in Alaska?—A. Absolutely none.

Q. That, you say, was terminated before taking this claim?—A. Yes.

Q. I mean before finally executing this power of attorney and affidavit?—A. Yes.

Q. Now, after that time did Mr. Cunningham draw on you from time to time?—A. Yes, sir; he did.

Q. Did you pay these drafts?—A. I did.

Q. I call your attention now to the application for patent, appearing in the same government files, and ask you if that is your signature [hands witness paper]?—A. It is.

Q. It was sworn to by you in the county of King on the 2d of February, 1906?—A. Yes.

Q. You were at Seattle at that time, were you?—A. I was.

Q. Living there during that period?—A. What is the date?

Q. February, 1906.—A. Yes; I think I was living at Seattle at that time.

Q. In this application you made the following statement:

I make entry for my own use and benefit, and not directly or indirectly for the use or benefit of any other party.

I ask you what is the fact in respect to that statement?—A. It is true.

Q. Prior to the time of swearing and signing to this application had you had any conversation with Mr. Cunningham or with any other of the entrymen with reference to the subject of thereafter at any time turning over your claim to any corporation, organized or to be organized, in connection with any other claims, or at all?—A. I had not.

Q. Did you have any conversation with Mr. Cunningham or with any other person with respect to holding this claim for the benefit of any other of the entrymen or any association to be formed among them or for the purpose of any future joint operation of your claim in conjunction with other claims?—A. I did not.

Q. Mr. Moore, I do not find among these files any affidavit such as has been denominated in these proceedings "the Love affidavit." I ask you if you recall ever having received or executed any other affidavit than the two I have showed you?—A. I do not remember of having received any affidavit of this nature.

Q. Of the nature of the Love affidavit?—A. No.

Q. You have heard the testimony of some of the other witnesses in regard to it?—A. Yes.

Q. Prior to the issuance of your final certificate then, according to your best recollection, you did not receive any other affidavit than the two I have shown you?—A. I did not.

Q. Did you forward to the receiver of the land office at Juneau, Alaska, the purchase price of your coal claim?—A. Yes.

Q. Do you remember what sum you forwarded to him?—A. I think it was \$1,600.

Q. Did you subsequently receive from him a final receipt for your coal claim? I show you a duplicate receipt contained in the government files in coal entry No. 28, which bears date April 23, 1907, and it is signed by P. L. Mullen, receiver, and ask you if you received a duplicate of this paper?—A. I did.

Q. I now ask you, Mr. Moore, whether at any time prior to receiving this receipt you had any understanding or agreement with any of the entrymen who are defendants in this proceeding or with any other person that your coal claim at any time thereafter should be transferred by you to any company, organized or to be organized, for the purpose of operation, or for any purpose?—A. None whatever.

Q. Did you have any understanding or agreement with any person that you would hold this claim for the benefit of any or all of the other entrymen or for the benefit of any person other than yourself, or for the purpose of joint operation of the coal mine?—A. I did not.

Q. Or for any purpose?—A. I didn't get that.

Q. I add, or for any purpose?—A. I don't understand question.

The COMMISSIONER. Read the question to him.

(Question read.)

A. No, sir.

Q. Mr. Moore, evidence has been introduced in this case to the effect that there was a meeting of certain persons who had made location through Mr. Cunningham of coal lands in Alaska, which meeting was held on the 15th of May, 1907, in the city of Spokane. Were you present at that meeting?—A. No.

Q. Did you ever receive a copy of the proceedings of the meeting? I show you for the purpose of enabling you to answer my question, the Claimants' Exhibit No. 3, which purports to be a minute of the proceedings of that meeting. Have you a copy of that [hands witness paper]?—A. This is the first time I have ever seen it. No, I did not.

Q. Did you subsequently receive a deed from Mr. Wakefield to be executed to the Union Trust Company?—A. I did.

Q. Did you learn at that time from anyone what was the purpose of it, or anything about the circumstance of such a meeting being had and a committee being appointed?—A. Well, I didn't learn anything about a committee being appointed. I understood that the deed was for the purpose of the formation of a company.

Q. Mr. Moore, did you execute the deed and send it to Mr. Wakefield?—A. I did.

Q. I show you a copy of the proceedings of a meeting held in Spokane on the 16th of July, Claimants' Exhibit No. 4, and ask you if you were present at that meeting [hands witness paper]?—A. I was not.

Q. It is stated in the minutes of that meeting that you were represented by proxy. Do you recall to whom you gave your proxy, or anything about it?—A. I may have given a proxy to someone, but I don't recall to whom.

Q. Did you afterwards learn of the fact that your father and Mr. Campbell and Mr. Cunningham had been appointed a committee to go to Salt Lake to negotiate with Mr. Eccles?—A. I learned about it some time after they had been to Salt Lake and returned.

Q. Do you remember how long afterwards?—A. No, I can't say at this time.

Q. Do you remember from whom you learned it?—A. I think from my father.

Q. You were away from home; that is, you were living away from Walla Walla during all of the time or substantially all of the time covered by your testimony here except when you happened to be at home on a visit?—A. Yes.

Q. And either met your father there or in Seattle, I take it? Or Portland?—A. I think it was Portland.

Q. Now, what information did you receive from him in respect to the negotiations at Salt Lake?—A. I don't remember very clearly at this time, but I remember he said he had been down there.

Q. I show you a copy of Government Exhibit 10, and ask you if you ever received a copy of that paper [hands witness paper]?—A. No, I have never seen this paper.

Q. When you were talking with your father in regard to this subject, which you say you think was at Portland, do you recall whether he told you anything about whether or not this proposition had been approved by the other entrymen, or whether anything had come of it?—A. No, he said, as I remember it, that nothing had come of it.

Q. Did you learn from him then or did you subsequently learn that the matter had fallen through entirely?—A. I did.

Q. You did not execute the Glavis affidavit, I believe, either?—A. No.

Mr. HUGHES. That is all.

Cross-examination by Mr. PUGH:

Q. Have you said—I don't remember, Mr. Moore—what time you became interested in the Alaska coal fields?—A. I became interested in the Alaska coal fields at the same time my father did. I don't remember the date. It was early in the year 1903.

Q. Early in 1903?—A. Yes.

Q. It was through Clarence Cunningham that you say you became interested?—A. Yes.

Q. Did you at that time have any understanding with Mr. Cunningham as to what compensation he would receive for his services to you?—A. I had none.

Q. You stated that you did not agree to give him any part of your claim, I believe?—A. I beg your pardon?

Q. You have stated, I believe, that you did not agree to hold any part of your claim for him, or convey any part of it to him?—A. I did not.

Q. You did not know what liability you would rest under to him on that account?—A. No.

Q. Did Mr. Cunningham, at the time he sought to interest you in making a location in Alaska, make any representation to you concerning any plan or purpose which might have been formed by any other entrymen or entryman?—A. No; he did not—

Q. Just wait until I finish the question, please. (Continuing.) To associate their claims for the purpose of development?—A. No; he did not.

Q. Or concerning any such plan for the future operation of any mine or mines which might be opened on the lands?—A. No.

Q. You knew at the time that these lands were in a region remote from any means of transportation and valuable only for coal deposits, did you not?—A. Yes.

Q. Did you have, yourself, any plan or purpose concerning the union or association of your lands with the lands to be acquired by any other locator, for the purpose of development?—A. I did not.

Q. Mr. Cunningham didn't say anything to you concerning the ultimate union of all the titles which you and the other entrymen might acquire?—A. No, sir.

Q. For the operation, enlargement, and disposition?—A. No.

Q. He made no representation to you about the purpose of any other entrymen until then?—A. No.

Q. Did he at that time disclose to you the name or names of any other locator or locators whose land was in that locality?—A. If he did I don't remember it.

Q. You did know that your father was interested, I suppose?—A. Yes.

Q. And a brother of yours?—A. Yes. No; my brother was not interested at that time.

Q. Not at that time?—A. No.

Q. Then you don't know whether, as a matter of fact—

Mr. HUGHES. You refer to his brother Frank, I suppose?

Mr. PUGH. I suppose—

A. Which brother do you mean?

Q. Well, I asked you if any brother was at that time.—A. No; neither brother was interested at the time.

Q. Neither was?—A. No.

Q. You don't know whether, as a matter of fact, you were acquainted with any of the persons who had then made locations of such coal lands?—A. No; I think none of them had made locations at the time, as far as I know.

Q. He was then for the first time interesting persons in making such locations?—A. Yes, sir.

Q. Did you subsequently learn the names of persons who had made locations of land in that district?—A. I don't know whether they had made locations at that time or not. I subsequently learned the names of persons who had made locations there.

Q. In the same immediate locality in which yours was located?—A. Yes.

Q. Did you have any meeting, conference, or communication of any kind with any of these persons concerning the ultimate disposition to any title which you or they might acquire?—A. Absolutely none.

Q. None whatever?—A. No.

Q. Did Mr. Cunningham, from time to time, advise you concerning the operations he was carrying on up there, and the purpose for which he was making expenditures?—A. My home address was Walla Walla, and Mr. Cunningham probably sent me reports from time to time there. I received one or two of them, or saw them at Walla Walla—I can't say which—and glanced over them; but I never paid any particular attention to them.

Q. I am going to ask you to examine a paper which I shall now hand you, which has been admitted in evidence as Government Exhibit No. 5, and ask you to state whether you ever received that paper or a copy of it, Mr. Moore [hands witness paper]?—A. If I did I don't recollect it.

Q. I am also going to ask you to inspect a paper which I now hand you, being in evidence as Government Exhibit No. 6, and ask you to state whether Mr. Cunningham ever sent you that paper or any similar paper [hands witness paper].—A. No; I never saw that paper before.

Q. In a like manner I wish you to examine two papers now handed to you, being in evidence as Government's Exhibits Nos. 8 and 9, and ask you if you ever received copies of those papers [witness examines papers]?—A. Well, I may have seen them, but I don't remember it.

Q. You don't remember, then, of ever having examined or having been made acquainted with the contents of any of those papers?—A. No, I never examined any of them very carefully. I glanced over one or two.

Q. You have stated, however, that he did send you some reports?—A. I stated that he probably sent them to Walla Walla. I don't know whether I received them or not.

Q. I thought you said they had been forwarded to you?—A. Well, I think one or two were forwarded to me.

Q. Did you ever note from any such statement or report that you may have received that Mr. Cunningham was keeping a common account for the moneys received and disbursed on behalf of all of the entrymen?—A. No; I examined them very carelessly and hurriedly, and paid very little attention to it then.

Q. I understood you, on your examination in chief, to state that you never executed an affidavit sent to you by Special Agent Love?—A. I don't remember having received any such affidavit.

Q. I am going to ask you to examine the letter which I now hand you and state whether or not that is your signature appended to it [witness examines paper]?—A. Yes; that is my signature.

Mr. PUGH. I now formally offer to file that communication in evidence as Government Exhibit No. 44.

The COMMISSIONER. Is there any objection to the offer?

Mr. HUGHES. No objection except that it would seem to me that if the affidavit was a proper part of the file, both the letter and the affidavit should be within the files. Neither of them were, and I think that the affidavit ought also to be produced if the letter is produced.

Mr. SHERIDAN. We would be very willing to produce the affidavit if it was in our possession. This is all that has come to us.

The COMMISSIONER. The letter may be received and filed as Government Exhibit No. 44.

(Letter admitted in evidence and marked "Government Exhibit No. 44.")

Mr. PUGH. I think that is all.

Redirect-examination by Mr. HUGHES:

Q. After seeing this letter, Exhibit 44, I ask you if you can refresh your recollection and state whether or not you did sign a Love affidavit as stated in this letter, if you can now recall it?—A. Well, I have no recollection of having signed the affidavit, but that is my letter.

Q. And what you say in this letter is doubtless correct, I suppose?—A. It must be, but I have no recollection of the Love affidavit.

Q. Now, a few other questions, Mr. Moore. You were asked in regard to compensation of Mr. Cunningham. I will ask you what your understanding was—what you understood would be Mr. Cunningham's compensation or how he would obtain his compensation for doing any services for you in locating a claim?—A. I didn't hear that.

(Question read.)

A. Well, I supposed, of course, that Mr. Cunningham would draw a salary, but I didn't give it any particular attention at the time.

Q. Now, you were asked about your purpose in taking this claim, as to whether or not you expected to go into any company or to operate it in any way, and you answered those questions. I want to ask you what purpose you had in taking this claim and in carrying it forward to final payment and entry?—A. Well, I knew that if there was any coal developed in that country that some day it might become valuable, and that I would probably be able to sell it to some one.

Q. Mr. Moore, you say you did not examine any of these accounts carefully that you did receive. I will ask you if, however, you understood that Mr. Cunningham was doing general work by way of exploration, trail building, etc., at the general expense of all the entrymen?—A. Yes, sir.

Witness excused.

FRED C. DAVIDSON, called as a witness on behalf of the claimants, after being duly sworn by the commissioner, testified as follows:

Direct examination by Mr. GRAY:

Q. State your name, your residence, and your occupation.—A. Fred C. Davidson; Oaksdale, Wash.; general merchandise business.

Q. How long have you resided there?—A. Twenty-one years.

Q. Are you acquainted with Clarence Cunningham?—A. I am.

Q. Mr. Davidson, you are one of the defendant entrymen here?—A. Yes.

Q. I wish you would state how and in what manner you first became interested in locating a coal claim in Alaska.—A. In the summer of 1902 Doctor Cunningham and myself had a party locate some oil lands for us in Alaska, and later on the gentleman returned to Spokane and the doctor sent for me, stating that he was here to consult regarding this oil matter, and we met at the doctor's office and decided to send up another party with this first gentleman to look into the matter and see exactly what we had up there. We were not

entirely satisfied with his report and the amount of money we were spending; and at that time he also mentioned the fact he thought or understood there were some very good beds of coal near the oil district; so we instructed the two gentlemen to go up, which they did during 1902, and examined the matter; and they returned and wanted more money and we were still dissatisfied. So the doctor suggested one day that we send for Clarence. At that time I had never met him. He told me he lived in Wallace, Idaho, and we could depend on what he said, and if we could interest him in the matter it would be very much to our interest to have him join us or send him up anyway. And so he telephoned him and he came down.

Q. Clarence came down?—A. Clarence came down to the office and we met in the office of Doctor Cunningham with this gentleman from Alaska and he made his report——

Mr. HUGHES. You mean the Alaska man made his report?—A. Yes; the Alaska man made his report. So Clarence listened very attentively to the conversation, and if I remember correctly, he got up and went out of the room and I think that later on that night, or the next day, he told his brother and myself, or his brother, that he didn't care to have anything to do with it, because he didn't think that the man was stating facts; that it was simply a wild goose chase to go up there and spend money, and so we had some samples of coal and he instructed the doctor to take those samples——

Q. Who instructed the doctor?—A. Clarence did; to have an assay made of those coals and to let him know the report at once.

Q. Did you also have some samples of the oil there, Mr. Davidson?—A. Yes; there was some samples of the oil, too.

Q. All right. What nature?—A. The doctor advised Clarence, I think by phone or letter, of the contents of the analysis of the coal, and he came down and said that he would go to Alaska and look after the oil matter and incidentally see what there was in the coal. So we agreed that he should go up.

Q. Now, just a minute. Did he go to Alaska; did Clarence Cunningham then go to Alaska?—A. Yes; Clarence went to Alaska.

Q. When did you next see him?—A. On his return.

Q. About what time was that?—A. Well, if I remember correctly it was along probably in November, 1902. I am not positive as to that, but I think that is about the date; something about that time.

Q. When you saw him upon his return what conversation did you have with him? When you saw Clarence Cunningham upon his return?—A. Well, upon his return I came up. The doctor phoned for me and I came up and we met in the office and we talked the matter over—what he had seen and what he had learned there concerning the oil——

Q. What did he tell you?—A. (Continuing.) Concerning the oil and the coal; and he says, "I find that this party that you sent up there doesn't know anything about coal beds and it is all hearsay with him entirely, but," he says, "I find that there are many good claims, or at least I consider them very good claims from what I have learned and the general information that I was able to obtain;" that he had taken an option from some of the squatters or settlers, as it were, on some of these claims and that he would like to interest as many as we could to take up these claims, I think at that time about 11 or 12—

about 11, if I remember correctly—and we went into rather a general discussion of the matter, and he spoke of the distance from the sea and all that sort of thing, and stated that it would require about \$500 each to acquire these squatters' rights and to pay the expenses and the first little development that was necessary in the matter, and I told him I would join issue in the matter with him.

Q. What expenses, Mr. Davidson?—A. Well, the traveling expenses up there and cutting some trails, and probably building the first cabins and making the first exploration, and for the cost of obtaining the squatters' rights.

Q. Making locations?—A. Making locations.

Q. Go ahead.—A. Then he asked me if I knew of anyone that I could recommend to join in the matter with us, and I told him I knew quite a number of people throughout the country; probably there might be some down in the Palouse country that I might be able to recommend that would join, and so he says will I go ahead and speak to some of them; and I had acquaintances here—Mr. Doeneen—and I went over and presented the matter to him, telling him all that I knew about it, and he said that he would like to meet Mr. Cunningham; so he did, the next day or the day after, I don't remember exactly, and talked the matter over, and he said he would join with us in the matter.

Q. What do you mean when you say he would join with you in the matter?—A. Well, I mean that he would take a claim.

Q. Go ahead.—A. I also went over to Mr. Dye, of the Exchange National Bank. I don't know whether he was president or cashier at the time, and I asked him if he would like to take a claim, presenting the matter to him, but he said he had his hands full and he didn't care to make any investments in such a distant country, and ice, and all that sort of thing, and he didn't think it advisable. I spoke to another friend of mine in regard to the matter, and that was about his version of it, and that is all I did in the matter at the time.

Q. What did Mr. Cunningham then do, if you know?—A. He succeeded, as I understood, in getting 11 men, each of them to take a claim and pay an initial fee of \$500, as I stated before, for the squatters' and services and development and expenses.

Q. And the cost of locating the claim?—A. Yes, sir.

Q. State whether or not you had any understanding with Mr. Clarence Cunningham that he should return to Alaska?—A. I didn't understand that.

(Question read.)

A. What he should return? Well, he was going back to make the locations for us, yes.

Q. At that time what understanding or arrangement or agreement, if any, did you have with Mr. Cunningham in connection with the matter other than what you have already stated?—A. Not any.

Q. What understanding did you have—state, in your own way, what understanding you had with Mr. Cunningham at that time?—A. At the time he went to Alaska?

Q. Yes; after you had put up the sum of \$500, or before that time. What was he to do?—A. Well, he was to locate a claim for me in this district; one of the claims he had spoken of.

Q. Was there any understanding or agreement, express or implied, between you and Mr. Cunningham at that time that he should have any interest in that claim?—A. Not any.

Q. Or that anyone should have any interest other than yourself?—A. Not any.

Q. What was your understanding about that matter, Mr. Davidson, there being several of you represented by Mr. Cunningham, having been interested in securing a claim in Alaska; I want you to state what understanding you had at that time.—A. Well, at the time that he went up to make the locations—make the location for me—I didn't have any understanding at all, but probably a year or fifteen or eighteen months, I won't be positive as to the exact date or time, in conversation with him one day he said that things were pretty expensive up there and he was spending a good deal of time and it would be necessary for him to charge a salary.

Q. But that was subsequent. I am speaking of this time when he first went up to make locations after he had returned and reported to you that he had the options. Did you at that time have any understanding with Mr. Cunningham or with Mr. Doneen or with anyone else, that Mr. Cunningham represented that you should be jointly interested in any claims or any such enterprises?—A. Not any. No. Nothing.

Q. Was it your understanding that he was to locate an individual claim for each of the persons whom he represented?—A. Yes, sir.

Q. Did you talk to Mr. Doneen before Mr. Cunningham did?—A. Yes, sir.

Q. What did you tell Mr. Doneen, Mr. Davidson?—A. Well, Mr. Doneen and I had been interested in some mining ventures prior to that time, and they had not been so very successful, and on account of those matters I wanted to explain in detail all I knew about it to Mr. Doneen.

Q. I want you to tell just what you told Mr. Doneen, as near as you can remember.—A. Yes; as near as I can remember, I told Mr. Doneen that all I knew about the coal proposition I learned from Cunningham, what Cunningham had told me and what these other parties has explained to me, and I thought it was a very good chance to make some money; and as I remember he remarked it was quite a distance away, and it would probably be some length of time before we would get any returns from it, if ever, and I says that is one of the chances you have got to take with any investment, and he said, as I stated before, I had better bring Mr. Cunningham around and he would have a conversation with him and decide whether or not he wanted a claim; and that was about the extent of the conversation at that time.

Q. What, if anything, did you tell Mr. Doneen about having any interest in any claim, other than that one which he might have located for you?—A. There was nothing said about that at all.

Q. Did you, thereafter, call on Mr. Doneen or meet him with Mr. Cunningham?—A. I did.

Q. What occurred at that meeting? Just state, as near as you can remember, what was said.—A. Mr. Cunningham related what he had seen and his experience up there, what he had seen and his judgment in the matter, and told Mr. Doneen he would like to have him

take a claim, and I guess that is about all there was to it, and he decided to do so.

Q. At that time, was there any conversation between you and Mr. Cunningham and Mr. Doneen or any of you entrymen that Mr. Clarence Cunningham should have any interest in any claim other than one that he might locate for himself?—A. None whatever.

Q. Was there any conversation to the effect that he could have any interest either in Mr. Doneen's claim or in your claim, then or at any other future time?—A. No, sir.

Q. Was there any conversation or understanding to the effect that you would jointly own these claims or jointly operate them?—A. No, sir.

Q. Either then or at any future time?—A. No, sir.

Q. Was there any understanding in any of these conversations to the effect that you should, if title was acquired, organize any company or corporation, or turn any of these claims over to such company or corporation?—A. No, sir.

Q. Subsequent to that time, did you have any conversation with Mr. Cunningham before he returned to Alaska to make the locations and buy out the squatters?—A. I think I met Mr. Cunningham a short time before he went to Alaska, and he stated that he had secured such and such men to join—not join, but to take a claim, I think, to the number of eleven or twelve, or something of that sort.

Q. And at that time did you have any conversation or understanding with Mr. Cunningham to the effect that he should have any interest in your claim, either then or at any future time?—A. No, sir.

Q. Did you have any understanding or agreement, express or implied, that you would, when you acquired title or at any other time, convey your interest in it to any corporation to be organized or then organized?—A. No, sir.

Q. Did you ever have any understanding or agreement that you should hold it for the benefit of any other persons or any interest in it for the benefit of any other persons who were interested or were going to have Mr. Cunningham locate a claim for them?—A. No.

Q. Did you have any conversation with Mr. Cunningham at that time; any other conversation prior to his going back to Alaska to make these locations?—A. Not that I recall.

Q. Now, then, Mr. Davidson, did you see him upon his return from that trip to Alaska?—A. I did.

Q. Where did you meet him then?—A. Well, I met him in Spokane; I don't know whether it was in the doctor's office or at the Hotel Spokane; I would not remember.

Q. What did you learn from him at that time, if anything?—A. I learned that he had made the locations up there, and that after he had made some resurveys he found that there were some more claims which could be had, and he thought if he could find the proper men, each one to take a claim, that he would probably have 20 or 25—I have forgotten the exact number—and he stated to me that there was more coal showings than he thought, and larger and better, and was quite well pleased with the matter.

Q. At that conversation—or, first, did he bring back some samples of coal with him?—A. Yes.

Q. And showed them to you?—A. I think that is the trip that he shipped down some 8 or 10 sacks of the coal, and brought them

over to Spokane, or a portion of them, and took them out to a blacksmith shop, and spent a couple of days making some tests to see what the quality of the coal was, and also took it to an assay office to have it analyzed or assayed.

Q. He advised you, did he, of the result of the analysis or test?—

A. Yes; he did.

Q. At that conversation, or any conversation while he was back here from Alaska on that trip, was there any talk or understanding or agreement of any kind, express or implied, between you and Mr. Cunningham, whereby Mr. Cunningham was to have any interest in your claim when you acquired title?—A. No, sir.

Q. Was there any understanding that you should hold your claim to be then or thereafter, or at any time turned over to a corporation or association of any kind?—A. No, sir.

Q. Did Mr. Cunningham—or, was there any conversation with Mr. Cunningham in which it was suggested that you should hold your claim jointly with these other persons, and that you should join with the others in holding and owning or operating it or mining this and other claims?—A. No, sir.

Q. Did you agree at that time, or at any other time prior thereto, with Mr. Cunningham, or with any of these other persons who had authorized him to locate claims for them up there, or with anyone, to the effect that you would operate your claim for a company or corporation or for the benefit of any entrymen?—A. No, sir.

Q. Or for the benefit of anyone other than yourself?—A. No, sir.

Q. Mr. Davidson, I now hand you a power of attorney, acknowledged by you on the 22d day of October, 1904, before F. W. Melding, a notary public, in the county of Spokane and ask you if that is your signature, and if you executed that instrument?—A. That is my signature.

Q. Did you execute that?—A. Yes.

Q. I desire to call your attention to an affidavit attached thereto, and sworn to before the same notary public, on the 22d day of October, 1904, and ask you if that is your signature?—A. That is my signature.

Q. Did you execute that affidavit?—A. Yes, sir.

Q. I call your attention to the following language contained therein:

I further swear that I am now in the actual possession of said coal lands through my agent and attorney in fact, and make entry for my own use and benefit and not directly or indirectly for the use or benefit of any other party.

Up to that time you made that affidavit was that statement true?—

A. Absolutely.

Q. Did you, at that time, or at any other time prior thereto, ever have any understanding or agreement, express or implied, with Clarence Cunningham, or with any other person that your claim or that any interest in it, when you acquired title, or at any other time should inure to the benefit of Clarence Cunningham, or any other person other than yourself?—A. I did not.

Q. Had you any understanding or agreement, express or implied, to the effect that you would thereafter combine your claim with any other claim, for the purpose of mining or otherwise?—A. I had not.

Q. Did you ever discuss the question of organizing a corporation to take over your claim, or other adjoining claims, or any interest therein?—A. No, sir.

Q. With Clarence Cunningham or any other person?—A. No, sir.

Q. Did you have any understanding either at the time that Clarence Cunningham came back from Alaska to report what he had seen up there the first time or at any other time, or at all, that you would hold that claim for the benefit of these other persons who were represented by Mr. Cunningham, or that they were holding their claims for your benefit, or any interest in it?—A. No, sir.

Q. I call your attention to a paper marked "Application for patent," sworn to by you, or apparently sworn to by you, on the 8th day of February, 1906, before John—Dan Margrave, notary public, at Oakesdale; and I will ask you if that is your signature and if you executed that instrument?—A. Yes; that is my signature, yes.

Q. I call your attention, Mr. Davidson, to the language contained therein:

I am now in the actual possession of said land through my duly authorized agent, Clarence Cunningham, of Kayak, Alaska, whom I have heretofore appointed as such, for the purpose of making record, location, and entry for such claim for me and in my name, and through whom I make the entry for my own use and benefit, and not directly or indirectly for the use and benefit of any other party.

Was that statement true at the time you made it?—A. It was.

Q. Were you at that time under any obligation or promise, or had you any agreement or understanding that was in any way inconsistent with that statement?—A. No, sir.

Q. Had you had any conversation with Clarence Cunningham prior to that time that indicated that he thought you were holding that claim of yours for the benefit of anyone other than yourself?—A. I had not.

Q. Prior to making your application for patent in 1906 had you learned anything concerning that coal claim from any source other than Mr. Cunningham?—A. Prior to what time?

Q. Prior to 1906.—A. Yes.

Q. I wish you would state what you know about it and what you found out about it.—A. In the fall of 1905 my father, who was living in Oakesdale at the time, wanted to take a little trip and I told him that I thought he had better go up to Alaska, and the ocean voyage would be good for him, and he could go up to the coal claim and go up there with Mr. Cunningham and the men who were working at the time, and he could see what was going on, as I had spent quite a little money in the matter, and it was quite a distance from habitation and from the markets, and I would like to have him go up, and I also stated Mr. Doneen joined me in the matter and he would like to have him go up.

Q. You say Doneen had joined you in the matter?—A. I said he had joined me in the matter, and he wanted me to speak to Doneen about the matter, and he said it was a good idea and thought he ought to go, and so my father went—I don't recall the exact month, I think perhaps in September—and he went up to the property.

Q. Just a minute. Had your father had any experience in coal mining?—A. Well, really not in the mines, but he had been in many coal mines in Tennessee and examined the coal in them, and had used

it in forges and blacksmith shops and common uses, and he thought he knew something—a little something—about it, but not an expert or anything like that. He went up to Alaska, and at that time he had never met Cunningham, but he went up and saw him and Cunningham introduced him to the men and they were working on some—

Q. Now, wait a minute. How long did he stay up there?—A. I think he was gone for perhaps three or four weeks altogether.

Q. And upon his return you saw him?—A. Yes.

Q. What did he tell you?—A. He told me he found vast measures of coal up there, to open the region, and that he thought it was a pretty good proposition, and that the claim up there some time would become very valuable; it might require a good many years to wait for it, but he advised me not to dispose of it at all, and he says, "Probably when you get old it will be very valuable."

Q. Did he tell you whether or not he had visited your claim?—A. He did.

Q. He gave you that advice in view of the examination which he had made up there on the ground?—A. Yes, on the different claims.

Q. Mr. Davidson, I call your attention to what is known as the Love affidavit and ask you if that is your signature, being an instrument executed on the 22d of December, 1906, before C. J. Meregard, a notary public?—A. It is.

Q. You made that affidavit, did you?—A. I did.

Q. I call your attention to the following language contained therein:

That said location was made for the sole use and benefit of the affiant, and has ever since so remained his and in his exclusive control; that at no time prior to location or at such time or since has affiant entered into any agreement, express or implied, or pledged himself by promise or otherwise, express or implied, by which the title to said land or any part thereof, or interest therein, is to pass to any other person or association whatsoever; that in event said claim goes to entry in the United States land office at Juneau, Alaska, and the receiver's receipt for the purchase price issues, he will not be under any contract or obligation or promise to sell or convey said tract to any person or persons or association or to put same into any company or joint holding for any purpose or otherwise dispose of same, but will be free in every way to hold said tract, to lease and sell it at any future time.

Were each and every one of those statements which I have quoted from that affidavit true at the time you made that affidavit?—A. They were.

Q. Had you made any agreement or contract or had you had any understanding or were you under any obligation or promise of any kind whatever, inconsistent in any way with those statements, Mr. Davidson?—A. No, sir.

Q. Further quoting:

That he does not now know any person or persons or association that intend or contemplate the leasing or purchasing of said tract.

Was that statement true at that time?—A. It was.

Q. Did you subsequently to that time, or did you at any time, pay to the United States the purchase price for that land?—A. I did.

Q. How much, or what amount did you pay for it?—A. Sixteen hundred dollars. I sent it over to a bank in Seattle to be transferred to the receiver of the land office through the National Bank of Commerce, if I remember correctly.

Q. And did you receive a final certificate of purchase subsequent to that time from the land office? I show you a copy from the official files here, in connection with coal entry No. 8.—A. I did.

Q. Dated March 13, 1907. Referring you now to that time, when you received that final certificate of purchase, dated the 13th day of March, 1907, up to that date, had you at that time, or upon the 13th day of March, 1907, or at any time prior thereto, made any contract or agreement or had any understanding express or implied with Clarence Cunningham or with any other person by which any interest in the claim purchased by you from the United States should inure to the benefit of any other person other than yourself?—A. I had not.

Q. Had you any understanding, contract, or agreement of any kind or nature by which the title to that claim or any interest in it should inure to the benefit of any corporation then or thereafter to be formed, or to any association or joint holding of any kind?—A. I had not.

Q. Had you any understanding, or were you under any promise or obligation of any kind, to consolidate and combine or unite that claim or any interest in it with any other coal claim for the purpose of mining or otherwise?—A. No, sir.

Q. Had you at that time made any contract or agreement of any kind respecting or affecting that claim?—A. I had not.

Q. Mr. Davidson, were you present at a meeting held at the office of Finch & Campbell in Spokane, Wash., on the 15th day of May, 1907?—A. I was.

Q. I hand you Claimants' Exhibit No. 3, and ask you to examine it and state whether or not it is a substantial statement of what occurred at that meeting—a substantially correct statement of what occurred at that meeting, as you now recall it.

Q. What? [Handing witness paper.]—A. It was. It is substantially so, as far as I know. I was a little bit late getting into the meeting that morning, or that afternoon, or that time; I remember that.

Q. I call your attention to that portion of these minutes which reads as follows:

And thereupon, on motion of Mr. Sweeney, seconded by Mr. Finch, the chairman was authorized to appoint a committee of five, who should organize a corporation for the purpose of acquiring the coal claims owned by those present and those of such other claim owners as might desire to join the corporation, the committee to secure deeds to the mining claims, and issue receipts therefor, and take all necessary steps to complete the organization of the company ready for the transaction of business.

You recall that, do you?—A. I do.

Q. And at that meeting a committee was appointed?—A. Yes.

Q. Subsequent to that time, pursuant to the action taken at that meeting, did you execute a deed, Mr. Davidson?—A. I think it did; yes.

Q. And at whose request was that executed, if at all, and where was it?—A. Why, I was under the impression it was sent to me, or forwarded to me at Portland by Attorney Wakefield.

Q. Mr. Wakefield, of this city, an attorney at law?—A. Yes.

Q. And did you execute it and return it to him?—A. Yes; I am quite sure I did. It was my intention to do so, anyway.

Q. Had you ever, at any time prior to the action taken at that meeting, had any understanding or agreement of any kind with Mr. Cunningham, or with any other of the entrymen in that district, that

you would join with them, or any of them, in the organization of a corporation for the purpose of acquiring title to your claim or any other claims in that district?—A. I had not.

Q. Did you ever have any understanding with anyone respecting your claim prior to that time?—A. No, sir.

Q. Had you had any understanding or any conversations prior to that time concerning the organization of a corporation for the purpose of acquiring title?—A. No, sir.

Q. To yours or any of these other claims?—A. No, sir.

Q. I call your attention to the minutes of a meeting held on July 16, 1907, in this city. Were you present at that meeting?—A. Not in person; no, sir.

Q. Did you authorize some one to appear for you?—A. I did.

Q. And represent you there? Who?—A. Yes, sir. Mr. Cunningham.

Mr. SHERIDAN. Clarence Cunningham?

The WITNESS. Yes.

Q. Do you know for what purpose that meeting was held, either then or thereafter?—A. Yes, sir; I did.

Q. And did you learn that a committee had been appointed to go to Salt Lake and have some negotiations with Mr. Eccles or with some other representative of the Guggenheim interests?—A. Yes; to meet some one somewhere. I don't remember who it was; I suppose Mr. Eccles.

Q. Did you at this meeting, or at any time prior thereto, authorize this committee or anyone else to make any arrangements with the Guggenheims or with Mr. Eccles which would be binding upon you in so far as your claim was concerned, unless it was subsequently ratified by you?—A. No, sir.

Q. Did you at any time subsequent thereto receive or see a copy of the memorandum, Government Exhibit 10, or did you hear from anyone who knew what negotiations had taken place at Salt Lake?—A. I heard about the negotiations, but I don't remember of ever having seen this. (Witness refers to paper.)

Q. Where, and how, and from whom did you hear of those negotiations?—A. Probably in Portland, when Mr. Cunningham returned from Salt Lake and was going over to Seattle on some business, and he took the same train with me, and his wife, and during the ride over to Seattle he told me what occurred at Salt Lake in a general way.

Q. What discussion did you have with him about that?—A. Well, there wasn't much of a discussion except that I told him I supposed that all of the claimants would agree to this, and I supposed it would be all right. There was some features that struck me, that did not meet with my approval, but I considered that inasmuch as Mr. Campbell and Governor Moore and some other men interested in the matter had been successful in their business enterprises, and were very much older than myself, and that had an equal amount of money in their claims the same as I had, and thought it was a good thing, that it would probably be all right for me.

Q. You say there were some things about it which were not entirely satisfactory to you at that time?—A. Yes, sir.

Q. Now, at the time that Cunningham first returned from Alaska and you put up this \$500 for him to go back and buy out the squat-

ters, as you have already testified to, and to locate a claim for you, had you any understanding or agreement with him as to what he was to receive for doing that for you?—A. At the time he went back?

Q. Yes, sir.—A. No, sir.

Q. Did you have any understanding or arrangement subsequent to his going back, or did you have any conversation subsequently about it?—A. With him; yes.

Q. When was that?—A. It was probably a year or perhaps a little longer, I could not remember exactly as to the date, but he said he would charge a couple of hundred dollars a month and expenses.

Q. Which you were to pay?—A. No, sir; not that I was to pay, but he would take that out of the assessments as they came along, you understand, as he would make a draft on me for my work on the claim; he was to charge up in a general way \$200 a month salary.

Q. Charged up to you and the other entrymen there who were contributing to him?—A. Yes; that was probably it, fifteen months or a year after the time we made the locations. I would not be certain as to the time.

Q. That was from the time when he first came back from his first trip to Alaska?—A. Yes.

Q. Did you express your assent to such compensation?—A. It was all right with me. Under the circumstances I thought it was quite reasonable, and I found out afterwards it was.

Q. How did you find out afterwards?—A. When father went up there and made the trip he told me how expensive it was to do business there and he told me he thought we were quite fortunate to get a coal claim at that expense under those circumstances.

Q. I call your attention, Mr. Davidson, to Government Exhibit 16, and ask you if that is your signature?—A. It is.

Q. That is your affidavit sworn to before L. R. Glavis, chief of field division?—A. Yes, sir.

Q. State the circumstances under which you made that affidavit and where it was made.—A. I think the affidavit was addressed to me at Oakesdale and I was away at the time and the mail was forwarded to Seattle and remained there for several days and afterwards was forwarded to Portland, where I was at the time, and I received the affidavit in a letter along with it stating that several of the claimants, most of the claimants, as I remember correctly, had signed the affidavit and he was anxious to have all of them do so, or something to that effect, and I took the affidavit and went to look for Mr. Glavis, and I went over to the post-office building in front of the Portland Hotel thinking that was the federal building at the time, but I found out later that he was down at the custom-house, if I remember correctly, and I went down and found Mr. Glavis there and introduced myself and he took my acknowledgment to the affidavit.

Q. What conversation did you have, if any, with Mr. Glavis at that time and place?—A. Well, as I said, he took the acknowledgment for me and I offered to pay him for it, and he said there was no charges for it, and I thanked him, and I told him that I was one of the original entrymen and in fact was the originator of the entire matter in connection with the doctor and that if he wanted any further information that I had or any knowledge I would be glad to give it to him, and he thanked me and I asked him how everything looked, and as I remember it, he said that as far as he could

see it was all right, and he said he was anxious to get the matter settled up, and I told him no more so than we and told him the reason for that delay for my not sending in the affidavit earlier, and probably visited him fifteen or twenty minutes, and found him quite a pleasant gentleman, and walked out.

Q. Mr. Davidson, I call your attention to the following language contained in that affidavit: "We have understood among ourselves that when title was secured we would form a company and combine the entire group, since conditions are such that one claim could not be profitably mined, as anyone familiar with coal mining appreciates." What did you refer to when you referred to that understanding? First, before that, there was attached to that your affidavit was attached to an affidavit of Clarence Cunningham. Or did you know?—A. I really don't remember how that was.

Q. Did you examine the affidavit of Clarence Cunningham to which this affidavit of your was attached?—A. Why, as I say, I did not know whether it was attached or not. I presume it was.

Q. You don't know?—A. I am not sure; I could not say.

Q. Do you recall having read the affidavit of Clarence Cunningham?—A. Yes; I did.

Q. I now refer you to this affidavit, and I call your attention to the language which you used, as follows:

We have understood among ourselves that when title was secured we would form a corporation or company and combine the entire group, since conditions are such that one claim could not be profitably mined, as anyone familiar with coal mining appreciates.

What understanding had you reference to?—A. I had reference to a meeting we had here in May, I think it was—attending the meeting—I think that the affidavit referred to.

Q. Had you, at any time, had any other or different understanding with any other of the owners; or had you, prior to the May meeting, had any other understanding with the owners, to which than you have referred?—A. No, sir.

Q. I call your attention to the following language further:

I have read the foregoing affidavit of Clarence Cunningham, who was and now is my agent, and I am well acquainted with most of the other coal-land entrymen for whom Cunningham is agent; and know of my own personal knowledge that the statements made in the foregoing affidavit are true, as far as they pertain to the Guggenheim syndicate and the understanding existing among ourselves as to the disposition of our claims. I know positively that the Guggenheims had nothing whatever to do with our claims.

I call your attention in connection with that affidavit to certain language in the foregoing affidavit of Clarence Cunningham, and I quote as follows:

We have had no written agreement whatever with any corporation, and the only understanding which we have had is that among ourselves. We have an understanding that when the patents have been secured we would form a company for the development of the coal fields, but none of the claims were taken up for the benefit of the corporations, and while we have understood when title was secured we would combine our claims and work the coal fields for ourselves, we have always proceeded with this end in view, for anyone familiar with coal mining knows it is impracticable to mine an individual claim of 160 acres in Alaska, where expenses are so great.

Is it true that you ever had had any such arrangement or understanding prior to the meeting in May, 1907?—A. No, sir.

(And thereupon the further hearing of this inquiry was adjourned to 9.30 a. m., December 10, 1909.)

DECEMBER 10, 1909—9.30 A. M.

INQUIRY RESUMED.

Appearances: Hon. William J. McGee, United States special commissioner; Mr. James M. Sheridan and Mr. William B. Pugh, counsel for the Government; Mr. E. C. Hughes and Mr. John P. Gray, counsel for the claimants.

FRED C. DAVIDSON on the stand.

Cross-examination by Mr. SHERIDAN:

Q. How old are you, Mr. Davidson?—A. Thirty-five.

Q. In what business were you engaged at the time you made your coal-land location?—A. General mercantile business.

Q. You have been continually engaged in that business?—A. Yes; partially that, and other business.

Q. What other business, Mr. Davidson?—A. I have an interest in a lumber business over at Seattle.

Q. You attend to your own business affairs personally, do you, Mr. Davidson?—A. Yes, sir; as far as I can.

Q. And about how many years have you been engaged in such business?—A. I have been in the mercantile business, that is, behind the counter, in business for myself, practically ever since I was 6 years of age.

Q. Now, how many persons did you say that Mr. Clarence Cunningham had interested in coal claims now under investigation before you directed him to locate?—A. How many had he interested?

Q. Yes.—A. Before?

Q. Before.—A. I can't say, but I am of the opinion that at the time I took my claim I was the first or second; the doctor and I were the first; the beginning of it.

Q. Your location was made in 1904, was it not, Mr. Davidson?

Mr. GRAY. Which location?

Mr. SHERIDAN. On his coal claim.

Mr. GRAY. Well, I don't think that question is fair to the witness, in view of the questions you have just asked him.

Mr. SHERIDAN. Well, I don't see anything unfair about asking him when his location was made.

Mr. GRAY. Well, go ahead.

Q. Answer the question.—A. Well, I don't remember just the date that I gave him power of attorney for this location, but whatever the date is there, that is the date it was made.

Q. This power of attorney is dated October 2, 1904?—A. Yes, sir.

Q. Now, as I understood you, you had conversations with Clarence Cunningham and with Doctor Cunningham as early as 1902 concerning the advisability of investing either in coal lands or oil lands in Alaska. That is correct, is it not?—A. That is correct; in the fall of 1902.

Q. Now, the first trip, as I understood you, that Clarence Cunningham made to Alaska, was for the purpose of passing both upon the oil land and the coal lands. Is that correct?—A. Not—well, I would not use the word "passing." He went up more particularly to see about our investments in the oil, and at the same time to look

into the coal matters to see what there was, from the reports that we had had or heard.

Q. Now, did he make another trip to Alaska for the express purpose of learning about the coal lands before you made your location?—A. Before I made my location?

Q. Yes.—A. I think that he did.

Q. So that one of these trips was for the specific purpose of looking into the coal land, and that was after the one when he went to look into the oil and coal lands?—A. Yes. I would not say specifically, because, naturally, he would look after both matters at the same time, but he gave it more attention on that trip than the one previous.

Q. Both of these trips were prior to your location?—A. Yes, sir.

Q. In 1904?—A. Yes, sir.

Q. Now, did Mr. Cunningham, prior to the time that you authorized him to make this location, make any reference in any conversation that he had with you as to when you might be able to realize on such an investment?—A. Not that I remember of; no, sir.

Q. Then it was your plan merely to take this land up, which you did authorize him to locate for you, and to allow it to lie idle indefinitely?—A. Well, I wouldn't say to have it lie idle indefinitely, because I didn't know what I might do with it after I acquired my patent, but my idea in taking the land was for the future. It depended entirely upon the development of conditions on the coast that might require coal, shipping interests and that sort of thing, and I naturally took it to be what I considered a good investment at the time—a chance at the time.

Q. Did Mr. Cunningham at any time subsequent to location have any conversation with you down to and including the time of final certificate concerning what improvements he had placed or would place on your claim?—A. Why, nothing in particular. In a general way he spoke of the development of the different claims up there, but not, that I recall, anything in particular.

Q. I now call your attention to what is known as a "Proof of character and improvements, agent," being also denominated as "Affidavit of agent as to the character of improvements," being one of the original entry papers signed by Clarence Cunningham, and bearing date January 2, 1907, executed before John W. Dudley, register of the Juneau, Alaska, land office; and for the purpose of propounding the question I shall quote a part of this paper:

That the nature of said improvements is as follows: Cuts and openings made on the course of veins; joint ownership in the work done on the Tenino claim, on Trout Creek, to determine the commercial value of coal in depth; spending over \$2,000 thereon.

I wish to ask you if, now that this has been read to you, your memory has been so refreshed that you can recall that Mr. Cunningham at any time subsequent to location had any conversation with you as to the nature of the improvements on your claim?

Mr. GRAY. I object upon the ground that the question has already been answered, and on the further ground that if that is the affidavit of the applicant, Mr. Davidson, the witness now upon the stand, to the effect that he didn't know, and that the proof thereof had been made by his agent, it simply encumbers the record and we have to pay for it.

Mr. SHERIDAN. To that I answer that if we were to accept the regular formal papers in this case which are in evidence and part of the original entry papers I don't see that there would be any cause for this inquiry at all.

The COMMISSIONER. I think he can answer the question. Just read the question to the witness so that he will understand it. (Question read.)—A. Nothing that I recall.

Q. Mr. Davidson, did you from time to time receive statements from Clarence Cunningham concerning the developments being carried on in Alaska on your coal claim and on the adjoining entries?—A. I received several statements.

Q. I now ask your attention to Government Exhibit No. 5, and ask you to state if you ever received such a statement from Clarence Cunningham? (Witness examines paper.)—A. I don't remember receiving this statement, but I—there was one probably sent to me. I don't recall it, but there was probably one sent to me.

Q. I now ask your attention to Government Exhibit No. 6 for a similar purpose; that is, whether Clarence Cunningham ever sent you such a paper? (Witness examines paper.)—A. This is October 20, 1905. I believe that I have seen this statement. The reason that I hesitated in the matter was this: I have been away from home more or less, and my father having been to Alaska and looked at this claim of mine, and oftentimes my bookkeeper when matters came up concerning this or other matters—I would probably pass it up and let him look after it. Through that way I might have learned more from my father than what I did from looking at the report, he having access to the mail, and having seen the claims, and often talked about it.

Q. Was it customary for your father, under such conditions as described by you, to call your attention to such reports as have been received during your absence?—A. No, sir, not always.

Q. I now invite your attention to Government Exhibit No. 7, consisting of the Hawkins report on this group of entries, and ask you to state if you ever received such a report from Clarence Cunningham? (Witness examines paper.)—A. I did.

Q. Can you recall approximately when?—A. No, sir, I can not. I have seen it.

Q. This map attached to the back of it is familiar to you? (Witness examines map.)—A. Yes, sir.

Q. Did you at any time subsequent to the location of your claim, and down to and including the time of final certificate, ever receive from Clarence Cunningham or any other person interested in this group of entries a map of the entire group other than the one you have just identified?—A. Read the question again, please.

(Question read.)

A. No, sir.

Q. What is the name of your claim, Mr. Davidson?—A. The Albion.

Q. This is it as it appears on the map attached to Government Exhibit No. 7. [Showing.] The Albion is it?—A. Yes.

Q. I now hand you Government Exhibits 8 and 9 and ask you if you received such statements at any time from Clarence Cunningham? [Witness handed paper.]—A. I don't recall the statement, but I probably received it.

Q. And No. 9 also?—A. Yes. The same answer to that.

Q. Are you aware, Mr. Davidson, of the statements that Clarence Cunningham had sent to any other of the entrymen in this group not having been sent to you?—A. No, sir.

Q. Did Clarence Cunningham at any time prior to the location of your claim say anything to you concerning the position which your claim occupies with reference to any other entrymen?—A. No, sir.

Mr. GRAY. Prior to location?

Mr. SHERIDAN. Yes, prior to location.

Q. What I mean, Mr. Davidson, is, did he indicate to you the relative position that it would occupy in the group or point out to you its place on the map, or otherwise?

Mr. GRAY. I object to the question because prior to location it would seem to me that it would be impossible for him to have done any such thing as that.

Mr. SHERIDAN. It seems to me that if a man is going to have a claim located, before it is located he will ascertain something concerning the whereabouts of the claim.

Mr. HUGHES. I do not mean to interrupt for any purpose except for the purpose of information. Do you refer to the first location, the one that was attempted in 1903, or the second location?

Mr. SHERIDAN. I mean the location which exists at present in the name of Mr. Davidson.

Mr. HUGHES. The one under the law of 1904? .

Mr. SHERIDAN. Yes.

Q. Now just read the question.

(Question read.)

A. He did not. In speaking of the country in general he said that I had a good claim, and I afterwards learned of the location of the claim, but at the time he made the entry for me why the claim was not pointed out to me on any map, or showing its position as concerns any other claim.

Q. Did you understand from any conversation you had with Clarence Cunningham, prior to the making of your location under the act of 1904, that any other persons were to have claims adjoining yours?—A. No, sir.

Q. Then we are to understand that as far as you were aware up to the time that your claim was located under the act of 1904, you didn't know that anybody else, and that is any of the present entrymen, had claims adjoining yours?—A. Well, I would answer that in this way. I didn't presume for a moment Mr. Cunningham was going to give me a claim three miles away from Mr. Doneen, or six miles away, whatever it would be; away out by itself; that I had induced Mr. Doneen to take a claim, and I didn't presume for a minute that he would put me away off by myself; that he would have claims scattered all over the country. That was not my understanding.

Q. Your understanding was that these claims were to be located in a group?—A. They were to be—something—yes, you might say in a group.

Q. Now, I invite your attention to the map attached to Government Exhibit No. 7, and which is a part thereof, being the Hawkins report on this group of entries, and ask you to state if at any time Clarence Cunningham made any representations to you prior to the location

of your claim under the act of 1904 as to his purpose in having these claims adjoining?—A. Read that question.

(Question read.)

A. Well, now, my idea of having the claims—I might explain it in this way. My idea of going to friends of mine and presenting the matter of lands in Alaska to be located upon for coal, was that if I could get five or six more friends or men that I knew were responsible and all right, and had money to pay for the development work, that it would naturally reduce the cost of the expense pro rata.

Q. Pro rata?—A. Well, pro rata for the claims. The ratio of the expense would be smaller.

Q. What kind of expenses do you refer to?—A. For the expense of probably taking provisions up and for the hiring of a cook, and building of cabins and cutting of trails, and doing some general development work. I think it would be a physical impossibility, almost a physical impossibility, for one man, unless he had a fortune, to go up and make his improvements and one thing or another—it would be very much easier to have other men join him and reduce the expense of making that. I was—

Q. That was your idea at the time of making this location?—A. Yes, sir.

Q. Did you ever become acquainted with the names or otherwise of the persons to whom you have referred to in your testimony, as the squatters whom Clarence Cunningham was to buy out?—A. Have I become personally acquainted with them?

Q. Either by name or in person?—A. Well, I remember having heard some of the names, but I don't know that I would recall them.

Q. You don't recall them now?—A. I don't recall them.

Q. Did you ever meet any of these persons?—A. Not to my knowledge.

Q. Who were these men—if I understand, there were two of them—who preceded Clarence Cunningham in Alaska and with whom, as I understand you, you and Doctor Cunningham and Clarence Cunningham had a conversation before you located your claim under the act of 1904?—A. That was Mr. Bruner and A. S. Marshall.

Q. They are residents of this city?—A. One of them.

Q. Which one?—A. Marshall.

Q. Do you know where Mr. Bruner lives?—A. I do not.

Q. Now you spoke of 11 persons having become interested in claims in Alaska at some stage of the proceedings. Just about what time was it that you knew of 11 persons being interested there in these claims?—A. Well, at the time of the first locations I understood there were about 11 at that time; 11 or 12.

Q. At the time that you made your location?—A. I think that is probable. Yes, sir.

Q. Were you at that time—

Mr. GRAY. Which location? You jump from one to the other.

Mr. SHERIDAN. I am speaking constantly of his 1904 location.

Mr. GRAY. Well, why don't you say so. You must know that the witness is not.

Mr. SHERIDAN. Well, I am not attempting to draw out any information concerning his oil investment.

Mr. HUGHES. But the location—

Mr. GRAY. Just read that question and answer, and see if Mr. Sheridan refers to the 1904 location, will you, please?

(Question and answer read.)

Mr. SHERIDAN. I will ask the question again.

Q. When you say that you knew that there were 11 persons at the time of your location, what location did you refer to?—A. To the first location..

Q. What year was that?—A. I think that was in 1903.

Q. Now, then, with how many more of the present entrymen, if any, had you become acquainted with by the time you made your location in 1904?—A. How many more of the entrymen?

Q. Yes.—A. Of the present number?

Q. Yes.—A. Up to the time that I made my location?

Q. In 1904; yes.—A. I don't recall of having met any of the others at that time.

Q. About how frequently in a year did Clarence Cunningham draw on you for funds, after making location in 1904, down to and including the time of final certificate?—A. Well, I can't state positively.

Q. Just roughly?—A. Well, probably some years I would; my expenses would be probably three drafts of \$100 or \$200 each; then again it might be more.

Q. It ran along about that way throughout the period indicated?—

A. Well, I don't know. I know the amount of money I invested in that matter, and it is over that period of time that I told you, but I don't know how much each year.

Q. I was just wanting to get an average and not an exact statement of that.—A. Yes.

Q. Now, about how much altogether did you expend on your claim from the time of location in 1904 down to and including the time of final certificate and including the payment for the coal land?—A. I can't state positively, but I have an idea, something like about \$4,000.

Q. Now, you spoke of Clarence Cunningham's salary as first being called to your attention some time between a year and eighteen months after the location of your claim in 1904, as I understand you.

Mr. GRAY. I suppose that the witness can take care of himself, but he did not; and I don't think you so understood him, Mr. Sheridan.

Mr. SHERIDAN. I think the record will show that he said exactly what I have stated.

Mr. HUGHES. I don't think there is any question there, is there? What is the question?

(Question read.)

Mr. HUGHES. There is not any question there.

Mr. GRAY. I knew. I simply suggested that you were trying to mislead him. You said a year or eighteen months. These things sometimes make quite a little difference. I don't suppose that you were trying to mislead him. I thought that you had just forgotten the exact language, and I was just simply calling the matter to your attention. I wanted it to appear as it was.

(Question read.)

Q. Now, Mr. Davidson, about how long was it, as nearly as you can fix it?—A. Well, I can readily see that I am a little bit mixed in the first and second locations.

Q. Well, indicate which location you mean.—A. It was about a year or fifteen months after the 1903 location that this matter came to my attention.

Q. Then, prior to that time there was no reference made to any compensation from you to Clarence Cunningham for his services?—A. No, sir.

Mr. HUGHES. Mr. Sheridan, would you permit a question at this point? Only for one purpose—because coming later it is difficult to attract attention to the witness's meaning.

Mr. SHERIDAN. Yes.

Q. (By Mr. HUGHES.) When you said you were a little mixed in the location did you mean mixed in your own mind or mixed about what Mr. Sheridan was inquiring about?—A. Well, I wanted to know what he was inquiring about.

Mr. HUGHES. Well, I thought that is what you meant and I wanted it to so appear on the record.

Q. What conversation did you have with Clarence Cunningham or anybody else which called to your attention the fixing of his salary?—A. Read the question, please.

(Question read.)

A. Well, as I stated, I don't remember exactly when the conversation occurred, but in the course of our conversation about matters in general this matter of expense, of remuneration for his services, came up, and just in a general conversation. He stated that "By the reports you will see I am charging up \$200 a month for expenses as salary."

Mr. SHERIDAN. I do not wish to be discourteous, but I must say that it is hard for the stenographer to follow the witness when consultations are going on between counsel.

Mr. GRAY. I have never been in a case yet where I could not consult with my associate without objection.

Mr. SHERIDAN. I have no objection to it at all, but we want to be considerate in this small room.

Mr. GRAY. I have not heard any complaint from the reporter.

Mr. SHERIDAN. Well, I observed it.

Mr. HUGHES. It never will be deemed a discourtesy if you address yourself upon any request to us.

Q. Now, on the occasion of this conversation, even though you can not recall the date, Mr. Davidson, was it definitely fixed in any way that you can now recall that he should receive \$200 and nothing else in compensation for his services?—A. Well, definitely what was with me personally.

Q. Yes; or with you and any other entrymen jointly? Just give use what you understand about it as near as you can.—A. As I stated before I think Mr. Cunningham and I were at the hotel or at the doctor's office; I am not sure where the conversation occurred—

Q. Here in Spokane?—A. (Continuing.) Or as to the exact date that it occurred. It was here in Spokane. In some way the conversation came up about expenses and he says, "I am charging \$200 a month" or "Going to charge up \$200 a month salary and expenses." I probably commented that that was reasonable enough or something of that sort and passed it up.

Q. It was your understanding, I presume, that you were to share pro rata with the other entrymen in that salary?—A. I was to share whatever the ratio of 33 claims, as I assume, went into this.

Q. Now you referred in your direct testimony to a conversation had subsequent to your 1904 location wherein Clarence Cunningham stated that he would endeavor to increase the number of entrymen to 25. Is that correct?—A. After the 1904 location?

Q. Yes.

Mr. GRAY. Where did you get that, Mr. Sheridan?

Mr. SHERIDAN. Taken down the very moment he said it in full.

Mr. HUGHES. I don't think there is anything in his testimony of that kind after the 1904 location. It is possible for me to see how the confusion would exist as to the testimony of the witness between the time when he went in there and the occasion when the new locations were made in the fall of 1904. His testimony on his direct examination was very clear and the question propounded to him was plain as to the danger of confusion as to what the witness means, when there ought to be no cause for confusion whatever in the matter.

Mr. SHERIDAN. I am satisfied that I would not have put this statement down in the notes at the time if it had not been stated.

The COMMISSIONER. You can easily settle it by referring to the record if you have a copy of his testimony.

Mr. HUGHES. It was said, but not as referring to the date after 1904 at all.

Mr. SHERIDAN. I submit if you will allow the witness to answer the question we will see.

Mr. GRAY. But you are unfair in trying to mislead him upon that point and make him state the contrary.

Mr. SHERIDAN. I make no attempt to mislead the witness at all.

The COMMISSIONER. Let us see what his testimony is on that point and see if he testifies to it.

Mr. GRAY (quoting from the record at page 1247). It says:

Q. Now, then, Mr. Davidson, did you see him upon his return from that trip to Alaska?

That is referring to the trip when he went back in the early part of 1903.

A. I did.

Q. Where did you meet him then?—A. Well, I met him in Spokane. I don't know whether it was in the doctor's office or in the Hotel Spokane. I would not remember.

Q. What did you learn from him at that time, if anything?—A. I learned that he had made the locations up there and that after he had made some resurveys he found that there were some more claims which could be had and he thought if he could find the proper men, each one to take the claim, that he would probably have 20 or 25—I have forgotten the exact number—and he stated to me that there were more coal showings than he thought, and larger and better, and was quite well pleased with the matter.

Now that is when he returned in the early part of 1903. Mr. Sheridan in his question appeared to place it subsequent to the locations in 1904.

Mr. SHERIDAN. That was my understanding when I asked the question, and I thank Mr. Gray for correcting me because it is a great advantage to my point.

Mr. GRAY. I was not assuming that counsel intended to confuse the witness.

Mr. HUGHES. I want to say that if we make any interruption or objection aside from the mere ordinary objections it will be without reference to what is advantageous to anybody's point, but what is in the interest of the truth.

The COMMISSIONER. I think the remark of Government's counsel was uncalled for in this particular matter. It is proper that we should know what the witness testified to in his direct examination.

Mr. SHERIDAN. There seems to be a wonderful capacity both in the minds of opposing counsel, and, with all due deference to the commissioner, of the present commissioner, to misapprehend the entire purport of my questions.

The COMMISSIONER. Well, I know—it was not necessary for you to make the remark that you did, Mr. Sheridan. We have already encumbered the record with a great many remarks that are entirely foreign to it. We will do more business and get along better by examining witnesses.

Mr. SHERIDAN. I am endeavoring to do so. Now read my question to the witness, please.

(Question read.)

Mr. SHERIDAN. We will correct that now. Strike that out—"Subsequent to the year 1904."

Mr. HUGHES. No. Either the whole of what has followed that must go out or a new question must be asked, or unless the question is corrected so that it must conform to the record.

Mr. SHERIDAN. I will leave it there and ask you the question in another form.

Mr. GRAY. Yes.

Q. Now, Mr. Davidson, when was it that you had the conversation with Clarence Cunningham already referred to by you in your direct testimony, at which time you said that Clarence Cunningham would endeavor to secure about 25 persons altogether to take claims in Alaska?

Mr. GRAY. At which time Mr. Cunningham said.

Q. That he had said. Yes.—A. That was on his return trip in 1903.

Q. Did you, from any knowledge that came to you personally or through Clarence Cunningham, know that 25 persons had become interested in these entries prior to your location in 1904?—A. Now read that question again.

(Question read.)

A. Not that I remember of.

Q. Now, referring to Government Exhibit No. 10, which is the Guggenheim memorandum of July 20, 1907, I understood you to state, whether my recollection be correct or not, that there was some parts of that that were not satisfactory to you. I ask you now to point out the parts that you objected to when it came to your notice.—A. Well, I am of the opinion that my attention was not called to the matter through a report of this sort. I think it was in a personal conversation, as I stated, with Mr. Cunningham, on the train between Portland and Seattle, after he had been to Salt Lake, but not from the report that I saw.

Q. Continue.—A. Answer your question? All right. What I thought we ought to have was, if we had made the deal, was to have guaranteed us to have taken so much coal—that was the idea—of the entire output of the property, and I might add that there was another. I didn't feel inclined to sell them coal at \$1.75 for their own use. I think those were the two remarks that I made at the time.

Q. I ask your attention to Government Exhibit No. 29, which is the articles of incorporation of the Bering River Railroad Company, and ask you what you know, if anything, concerning such an organization?—A. I have heard about it. Now the way it was called to my attention I can't really recall.

Q. Have you any interest in it?—A. I have not.

Q. Have you had at any time since the location of your claim in 1904 any interest in such an organization as this?—A. Since 1904?

Q. Yes.—A. I have no interest in the organization of the Bering River Railroad Company, except something may have been charged up in an expense account for something. I have no interest or am no stockholder.

Q. Are you aware that in any reports submitted you by Clarence Cunningham at any time that you had been assessed for expenses in connection with this railroad?—A. From a witness the other day I heard something regarding it but I had no knowledge of it at the time.

Q. That is all you know about it?—A. Yes, sir.

Q. I have here a paper purporting to be signed by Fred C. Davidson, being a letter addressed by him to H. K. Love, dated Oakesdale, Wash., December 31, but the year is illegible. I ask you to state, Mr. Davidson, if that be your signature?

(Witness examines paper.)

A. It is. I directed this letter—I directed my bookkeeper to write this letter, which he did, and many times he signs letters for me and the "D" there—that is what I am questioning, but I was authority for it. It may be my signature, but it does not look exactly to be my signature.

Mr. SHERIDAN. I just invite the attention of counsel to the fact that that was the letter that was referred to in Mr. Doneen's testimony, and the reason that it was not introduced at that time was that it referred both to Mr. Doneen and Mr. Davidson, and I wanted to put it in to account for the Love affidavit.

I now offer this in evidence to be marked Government Exhibit No. 45.

Mr. HUGHES. We have no objection except it unnecessarily encumbers the record.

(Paper admitted in evidence and marked Government Exhibit No. 45.)

Q. Mr. Davidson, I now invite your attention to Government Exhibit No. 3, and especially that part of it purporting to be a copy of the Cunningham journal, and especially to page 1 thereof, whereof under date of Wallace, Idaho, February 1, 1903, it appears "Each subscriber shall have one-eighth of his stock issued to Clarence Cunningham in consideration of his services in securing said land." I ask you if you ever saw such a journal, or had any information or

knowledge of such an understanding between you and Clarence Cunningham?—A. None whatever. I never saw the journal.

Q. No such agreement ever existed between you and Clarence Cunningham?—A. No, sir.

Q. Did, you, from the date of the location of your claim in 1904, and from the date of your first location in 1903, down to and including the time of final certificate, consult any counsel in connection with your claim?—A. Not that I recall. I would not call it consultation when you have an acknowledgment taken by an attorney to an affidavit, would you?

Q. Well, a mere acknowledgment, no—A. Well, that is all.

Q. You left matters of that sort to Clarence Cunningham to attend to, I presume?—A. Yes, sir.

Q. Handling the legal part of it?—A. Representing my claim?

Q. Yes.—A. I did.

Q. Were you financially interested with any other of the entries now concerned at the time that you made either your first or second locations?—A. Yes, I had some; as I have stated before. Dr. Cunningham and I had some oil property in Alaska and some mining stock—little mining deals—and also with Mr. Doneen, but aside from that, I don't recall having an interest with anyone else.

Q. Did you, subsequent to your location in 1904, down to and including the time of final certificate, become interested with any others than those named by you; that is, financially in business concerns?—A. That is between 1904—

Q. And 1907?—A. The date of final certificate?

Q. Yes.—A. Other than those named?

Q. Other than those named?—A. Not that I recall in any way.

Q. Have you any other interests in Alaska than this coal claim, Mr. Davidson?—A. No, because we have lost our oil locations. We have disposed of them some time ago.

Q. Have you ever been in Alaska?—A. No, sir.

Q. I don't recollect whether or not you stated you executed a deed to be placed in the hands of Mr. Wakefield in connection with these meetings in 1907, concerning the negotiations with the Guggenheims. Did you ever execute such a deed?—A. As I stated in my testimony—

Mr. GRAY. Now—well, go ahead. I am getting tired of calling counsel's attention to your memory of Mr. Davidson's testimony.

A. I am of the opinion that Mr. Wakefield's papers were forwarded to me. I was in Portland or Seattle. I am not sure whether I signed them but I am of the opinion that I did.

Q. Do you recall anything of what subsequently became of the deed which had been forwarded to you?—A. Well, I just stated if I signed it I know it was returned to Mr. Wakefield.

Q. Do you know whether it has been destroyed or is still in existence?—A. Well, I have understood that all the deeds were destroyed.

Q. You did not destroy it yourself?—A. I went to Mr. Wakefield's office on two occasions, once he was sick and once when he was quite busy, so busy I didn't see him. I was never there again, but in some way I am under the impression that they came to me by mail; that if I signed one it was returned to me. I remember of having had a conversation with Mr. Doneen regarding the matter, because he went up for his.

Q. Now, my question is, do you remember having destroyed it?—
A. I do not.

Q. Was the money which you expended on your claim down to and including the time of final certificate your own money, individually?—A. Yes, sir.

Q. Did you at any time have any interest in any scrip that might have been placed on any timber land in Alaska, as referred to already in testimony by witnesses?—A. No, sir.

Mr. HUGHES. I don't like to be interrupting, but there is no testimony of either witness from which it is stated, or even the inference might be drawn, that any scrip might have been placed upon any land in Alaska. There is some testimony about the purchase of scrip with that view, but never any that such scrip had ever been located.

Q. You are not aware that any such scrip had ever been located for the purpose indicated, are you, Mr. Davidson?

Mr. GRAY. What purpose indicated?

Mr. SHERIDAN. Taking up timber lands in connection with these claims.

Mr. GRAY. There is no evidence at all to justify any such inference as that.

Q. Answer the question.

(Question read.)

A. You are referring to timber lands in Alaska?

Q. Yes, sir.—A. No.

Mr. SHERIDAN. That is all.

Redirect examination by Mr. GRAY:

Q. Mr. Davidson, Mr. Sheridan asked you how much money you had expended on your claim, including the purchase price, from the date of this location in 1904 down to the time of final purchase, and you stated that you have expended, between 1904, when your location was made, and final purchase, the sum of \$4,000, or thereabouts. To which location did you refer when you said you had expended about the sum of \$4,000?—A. 1903. From the inception I was in about \$4,000, as I remember.

Q. And if your answer reads that it was between the location of 1904 and the time when you paid your money to the Government, including that money, you misapprehended Mr. Sheridan's question as to which location he referred to?—A. I did.

Q. Now, are you acquainted with these first 11 or 12 gentlemen who each authorized Mr. Cunningham to locate a claim in Alaska—a coal claim for him?—A. Not with all of them.

Q. At the time Mr. Cunningham returned in the early part of 1903, how many of them did you know, Mr. Davidson, and who, if you recall?—A. Why, Doctor Cunningham, and Mr. Doneen, and Mr. Mason, and I think I have met Mr. Finch; I am not sure. I wouldn't say whether I had or not.

Q. Mr. Finch was not one of those?—A. Wasn't he?

Q. Upon Mr. Cunningham's return in 1903, and after he advised you that there were in the neighborhood of 20 or 25 claims which were subject to location, were you aware that other persons authorized him to make locations for them in that district?—A. I heard so; yes.

Q. The names of those persons did you know at that time?—

A. The names; was I acquainted with them?

Q. Yes; at that time.—A. I can't state positively whether I was acquainted with any of the gentlemen or not; probably I was, if that included Mr. Finch. I was acquainted with Mr. Finch. I don't remember the date he was in; perhaps two or three more.

Q. I understood you in your cross-examination, in answer to a question of Mr. Sheridan's, to say that you did not know that other persons had been interested by Mr. Cunningham, or that other persons had authorized Mr. Cunningham to make locations for them up there. What are the facts concerning that?—A. Well, I don't quite understand how I made such a statement, because I knew he was around trying to get men to take up claims; and I don't recall making such a statement.

Q. When did you first hear of the Behring River Railroad Company, Mr. Davidson?—A. I can't state positively, but I think that it perhaps was in 1907 or 1908. I am not sure.

Q. Do you recall the time when you talked to Mr. Cunningham about these Guggenheim negotiations?—A. Yes, sir.

Q. When was it with reference to that time?—A. It was after that.

Q. You never had heard of it prior thereto?—A. No, sir.

Q. Now, you say that you received—do you recall having seen this Exhibit No. 6, which was the statement or circular which Mr. Cunningham sent to you; counsel for the Government having asked you if you received that?—A. I stated that no doubt it was sent to me at Oaksdale, and I had heard about it. I have either seen it or my father had said something about it, because that was after the time he had been to Alaska.

Q. Now, there is some statements in that I want to ask about. I ask you whether, either by seeing it or otherwise, you knew that Mr. Cunningham had written to you, using such language referring to such matters. In this Exhibit No. 6 is the following language:

I am pleased to state that Mr. Hawkins made a most thorough, careful, and painstaking examination of the entire field owned by us, as well as a cursory examination of the coal lands of the English company adjoining. His report is now being prepared, together with maps, showing the topography of the field, strike and dip of the veins or measures; thickness or amount of coal shown in each vein above tunnel level, with analysis of same. In addition to the above, his map will show contours and levels from our lands to the ocean with charts and soundings of the channels where we are likely to build coal bunkers and wharves, besides giving approximate route and length of proposed railroad to both the lands owned by the English company and ourselves.

What consideration did you place upon that language referring to coal bunkers and wharves and to the railroad, Mr. Davidson?

Mr. SHERIDAN. I object, unless it is first shown that those things came to the attention of the witness.

Mr. GRAY. All right, I will withdraw it.

Q. Did you at the time or at some subsequent time have any such matter called to your attention, or did you see any such thing in this report of Mr. Cunningham's, referring to a railroad or coal bunkers?—A. I heard something about it. Whether it came from that report—it was through the report, probably, I heard it. Perhaps my father had said something about it or read it.

Q. What impression did that make upon your mind?—A. It didn't make much of an impression upon me, for it was too much of a deal for me in my limited financial condition to consider at all. In fact, my father advised me when I came back, he says, "You want to be

very careful about getting too much money tied up so far away from home," or something of that sort. He says, "Take your claim and get your patent and protect it and you will have something that will be valuable." He was there during that examination, about that time.

Q. I call your attention to the following language contained therein:

We are already advised that we are holding considerable tracts of land for timber which we will require in large quantities, but there is no law in Alaska for acquiring titles to timber lands, consequently would consider it advisable to try to secure some cheap scrip and cover all we can before beginning a very extensive operation.

Did any such language come to your notice, Mr. Davidson, in reference to the purchase of scrip?—A. I don't remember anything about a scrip proposition until it was perhaps a couple of years ago or a year and a half ago, something about that time, I heard something about it. I remarked I had all the timber I cared for, which was true at that time.

Q. Did you ever agree at any time to expend any money in acquiring any timber lands or any scrip to secure timber lands in Alaska?—A. No, sir; I never agreed to it. Never considered it.

Q. Never considered it?—A. No, sir.

Q. I call your attention to the following language in the same Exhibit No. 6:

We have located a permanent tunnel site on Clear Creek, which will cut all the various veins described in Mr. Hawkins's report and affording the best possible outlet. This tunnel will be 1,100 feet in length when it reaches the first of these coal veins and continuing on it will be about 6,000 feet to the last seam. We are now building quarters to transfer our camp from Trout Creek to this point and as soon as the buildings are completed we will cut off most of our expense until definite plans are perfected.

Did you have any knowledge of any such proposed tunnel?—A. I heard something about a proposed tunnel.

Q. What did you do or what impression did that make upon your mind, Mr. Davidson; what consideration did you give to it?—A. Well, I didn't give it much consideration at all, because I figured it would be a very expensive proposition at the time and I had no patent for my claim and I would not consider any such a proposition for my claim.

Q. When you heard of it did you express your objection in the matter any way?—A. Well, I perhaps did to my father. I don't know that I expressed it to anyone else at the time. The chances are we talked it over down home and that was all there was to it.

Q. Did you ever consider that Mr. Cunningham was ever authorized by you to engage in any such undertakings as the construction of any such a tunnel or the purchase of scrip or the holding of timber lands or construction of railroad or coal bunkers or wharves or any of those things?—A. No, sir; I simply gave him power of attorney to get a claim for me; to do the necessary work on it. I did not authorize him to make any further expenditures involving me financially in anything.

Q. Did you authorize him to engage in any such undertaking on your behalf as those mentioned and to which I have referred?—A. No, sir.

Q. Did you ever authorize Mr. Cunningham to locate a water power up there for you or locate any interest in any one for you?—A. No, sir.

Q. Did you ever have any interest in any water power in Alaska?—A. No, sir.

Q. Were you at any time prior to your purchase of your coal claim from the Government ever called upon by Mr. Cunningham or by any other entryman in that district to consider the question of the construction of a railroad or wharves or docks?—A. No, sir.

Q. Were you ever called upon by Mr. Cunningham or any other entryman in that district or anyone to consider the question of driving a long tunnel to cut in on the coal measures; a long tunnel such as is described in Government Exhibit No. 6, to cut the coal measures on any of these claims?—A. No, sir.

Q. Were you ever called upon by Mr. Cunningham or any other of these entrymen to consider the question of taking an interest in any water power or in developing any water power prior to the purchase of your coal claim?—A. No, sir.

Q. Prior to the purchase of that claim were you ever called upon by Mr. Cunningham or anyone to consider the question of acquiring any timber land. Did you ever consider that question prior thereto with any of them?—A. No, sir.

Q. Were you ever, prior to your purchase from the Government, requested by Mr. Cunningham or by any other entryman in that district or by anyone else to authorize Mr. Cunningham or anyone else to take up any of these matters or propositions for you or in your behalf?—A. No, sir.

Mr. GRAY. Read the last question, please.

(Question read.)

Mr. GRAY. That is all.

JOSEPH H. NEILL, a witness produced on behalf of the claimants, being first duly sworn by the commissioner, testified as follows:

Direct examination by Mr. GRAY:

Q. Just state your full name, your residence, and your occupation.—A. Joseph H. Neill; I live in Franklin County, Wash.; I am a farmer.

Q. When did you first become interested in securing a coal claim in Alaska?—A. In 1903.

Q. Who first called the matter to your attention?—A. My brother, R. K. Neill.

Q. Just state as near as you can what he told you. First, where did you meet him?—A. In Spokane.

Q. What did he tell you at that time?—A. Why, he told me he had lived up there—

Q. Up where?—A. Up in Alaska, in Kayak, and examined the ground, and he had taken a claim himself and thought it would be a good idea for me to take up one, too, and it would be a good investment; it would be some time before it would—before we would receive anything out of it.

Q. Did he tell you who had located the claims up in that district, who was acting in that matter?—A. Clarence Cunningham, he said.

Q. Did he say anything to you about how much money it would require for you to secure a coal claim up there?—A. He said he thought it would cost between \$2,500 and \$3,000.

Q. And what did he tell you, or what did you tell him?—A. I told him I would take one if he could get me one.

Q. What did he say as to whether or not he would do so?—A. He said he would see Clarence and see if he could not locate one, and he said Clarence would draw on me.

Q. Did Mr. Cunningham subsequently draw on you for the money?—A. He did.

Q. Did you see Mr. Cunningham after he had drawn on you for that money?—A. Yes, sir.

Q. Where?—A. At Wallace, Idaho.

Q. What occurred at that time?—A. He told me he had located me on a claim, and I told him I had received his draft and paid it.

Q. Did you discuss the matter any more fully with him at that time?—A. Not very much. I was busy at the time, and I told him that I hoped it would turn out to be good.

Q. Subsequent to that time did you pay any other sums of money to Mr. Cunningham?—A. I did.

Q. How?—A. By him drawing on me at different times.

Q. And you paid the drafts?—A. Yes, sir.

Q. At the time that you and your brother were discussing the matter, when he first spoke to you about Mr. Cunningham locating these claims up there and that he thought he could get him to locate one for you, did he tell you what Cunningham was getting for locating it?—A. No.

Q. Did you expect Cunningham to do it for you for nothing?—A. He said he would talk about that later.

Q. What did he tell you?—A. He said Clarence was receiving a salary.

Q. Who was to pay the salary?—A. It would come out of the different ones he located.

Q. All of you should contribute to the salary of Cunningham?—A. Yes.

Q. When was that?—A. It was along that fall or the next spring after I saw him.

Q. Did you have any agreement with Mr. Cunningham at that time, or with your brother for Mr. Cunningham, that Mr. Cunningham should have any interest in your claim?—A. No, sir.

Q. I call your attention to a power of attorney executed on the 21st day of October, 1904, before W. A. Corey, a notary public, and I will ask you if you executed that power of attorney?—A. I did.

Q. I refer to the power of attorney included in the papers of coal entry No. 25, and I call your attention to an affidavit sworn to on the same day before the same notary public, and ask you if that is your signature, if you executed that affidavit?—A. I did.

Q. I will call your attention to the following language contained in that affidavit:

I further swear that I am now in the actual possession of said coal land, through my attorney and agent in fact, and make entry for my own use and benefit and not directly or indirectly for the use or benefit of any other parties.

Was that statement true at the time you made it?—A. Yes.

Q. At that time, Mr. Neill, or at any time prior thereto, had you had any contract or agreement or understanding of any kind with any person by which any interest in your claim should inure to the benefit of anyone but yourself?—A. No, sir.

Q. Did you have any understanding of any kind, whether written or otherwise, that you would join your claim with any other claim for the purposes of mining, or that you would consolidate it for a joint holding for any purpose?—A. I did not.

Q. Did you have any understanding that on getting title, or at any time in the future, that you would turn it over to a corporation to be formed?—A. No, sir.

Q. I call your attention to the application for patent sworn to on the 12th day of March, 1906, before W. A. Corey, a notary public, and ask you if you executed that paper?—A. I did.

Q. In the application for patent, I call attention to the following language:

That I am now in the actual possession of said mine through my duly authorized agent, Clarence Cunningham, of Kayak, Alaska, whom I have heretofore appointed as such for the purpose of making the location record and entry of said coal lands for me and in my name, and through whom I make the entry for my own use and benefit, and not directly or indirectly for the use and benefit of any other parties.

Was that statement true at the time you made it?—A. It was.

Q. At or prior to that time had you ever made any agreement or contract, or had you entered into any understanding or made any promise, with any person, by which any interest in that claim when you secured it should inure to the benefit of anyone but yourself?—A. No, sir.

Q. For whose benefit and use were you taking that claim, Mr. Neill?—A. Mine.

Q. Had you at any time prior to swearing to your application for patent, or at that time, made any contract or agreement, or were you under any understanding, obligation, or promise to turn it over to a corporation then or thereafter to be formed?—A. No.

Q. Or were you, or had you agreed or understood that when you got title you would consolidate it with or unite with any other claims for joint holding or joint mining?—A. No, sir.

Q. Had you given that matter any consideration at that time?—A. No, sir.

Q. You afterwards paid for your land to the Government of the United States, did you not?—A. Yes, sir.

Q. Who did you send the money to?—A. To the land office in Juneau, Alaska.

Q. And did you receive back a final certificate of entry?—A. I did.

Q. I show you a copy of duplicate, dated April 23, 1907, coal entry No. 25; you received a duplicate of that, did you?—A. Yes, sir.

Q. Dated on April 23, 1907?—A. Yes, sir.

Q. Had you on April 23, 1907, or at any time prior thereto, made any contract or agreement, or were you under any understanding, express or implied, by which any interest in your claim should be held for the benefit of any person other than yourself?—A. No, sir.

Q. Had you prior to that time had any contract or agreement with Clarence Cunningham, or with any other entryman, or with anyone, by which you had agreed to turn that claim over to a company, corporation, or association at any time in the future?—A. No, sir.

Q. Had you any agreement with Mr. Cunningham, or with any other person, that as soon as you got title you would consolidate it, or combine it, or unite it with any other claims in that district?—A. No, sir.

Q. For any purpose?—A. No, sir.

Q. Mr. Neill, from the time you saw Clarence Cunningham in Wallace, after you had paid this first draft, until you secured your final certificate of purchase to the land from the Government?—A. I did; about a year ago.

Q. I mean up to that time in 1907 when you paid your money to the Government?—A. I had seen him once or twice.

Q. Where?—A. I think once here in Spokane and once up in Wallace.

Q. When was the time in Wallace?—A. It was right after I first got him to locate me on the claim.

Q. Right after you paid the first draft?—A. Some time there in the fall.

Q. Of what year?—A. 1903.

Q. When did you next see him?—A. I could not just remember. It was along in 1904 or 1905.

Q. At that time did you have any conversation with him concerning your claim?—A. Not very much.

Q. But you had some, did you?—A. Talked about how he was getting along up there and how everything was going.

Q. Did you at that time have any understanding or conversation with Mr. Cunningham to the effect that after you got title to the claim you would turn it over to a company or corporation?—A. No, sir.

Q. Or did he suggest any such thing to you?—A. No, sir.

Q. Did you ever hear of a coal expert being sent up there, Mr. Neill, to look over that country?—A. No, sir.

Q. Did you say you lived in Franklin County, Washington?—A. Yes, sir.

Q. When did you move into that country?—A. It will be five years next April.

Q. Well, that would be in April, 1905?—A. Yes, sir.

Q. Been farming ever since, Mr. Neill?—A. Yes, sir.

Q. Did you attend a meeting held at the office of Finch & Campbell on the 15th day of May, 1907?—A. No, sir.

Q. I now hand you Claimants' Exhibit 3, Mr. Neill, and ask if you ever received a copy of the minutes of that meeting, as shown there.—A. Well—

Q. Read that over to make sure [handing witness paper].—A. I think I did; yes.

Q. R. K. Neill, who was appointed a member of the committee at that meeting, was your brother, was he?—A. Yes.

Q. I call your attention to the following language which is contained there: "Thereupon, on motion of Mr. Sweeney, seconded by Mr. Finch, the chairman was authorized to appoint a committee of five, who should organize a corporation for the purpose of acquiring the coal claims owned by those present and those of such other claim owners as might desire to join the corporation, the committee to secure deeds to the mining claims and issue receipt therefor, and take all necessary steps to complete the organization of the company ready for the transaction of business. And thereupon a committee was appointed consisting of C. J. Smith, Clarence Cunningham, H. W. Collins, R. K. Neill, and Frederick Burbidge." Subsequent to that time did you receive and execute a deed to your claim?—A. I did.

Q. Pursuant to the action taken at that meeting?—A. I did.

Q. To whom did you send it?—A. Mr. Wakefield.

Q. Now, did you attend a meeting held in this city on the 16th of July, 1907?—A. No, sir.

Q. Did you ever receive a copy of the minutes of a meeting which is marked Claimants' Exhibit No. 4 [handing paper to witness]?—A. I don't think I did. If I did I don't remember it.

Q. Did you ever receive a copy of a memorandum or proposition to the Guggenheims, or someone connected with them, for the sale of certain of these coal claims or interests therein? I show you Government Exhibit 10, and ask you if you received that, or a copy of it [handing paper to witness].—A. I did, I think.

Q. Did you say you think you did?—A. Yes; I am pretty sure I did.

Q. Did you pay any attention to that?—A. No, sir.

Q. What did you hear or know about any committee going to Salt Lake to have—or any negotiations held between them down there with the Guggenheims?—A. Never heard of any at all.

Q. Is that when you saw this paper you have referred to?—A. Yes.

Q. Did you have any conversation with anyone about that matter subsequent to that time?—A. No.

Q. Did you have any conversation with your brother about it?—A. Not until afterwards.

Q. Well, what did you have at that time? That is what I want to know.—A. I was here in town and asked him what they had done about it, and he told me it fell through. That is all he said about it.

Q. Did you ever consent to any such arrangement?—A. No, sir.

Q. At the time, did you know anything about it?—A. No.

Q. Have you ever sold you claim, Mr. Neill?—A. I have.

Q. For how much money?—A. Fifteen thousand dollars.

Q. Sold it to Mr. Horace V. Winchell, at Minneapolis?—A. Yes, sir.

Q. And the deed was made to Mr. Fred B. Snyder, of Minneapolis, Minn.?—A. Yes, sir.

Q. Did you ever pay any part of the money which you received for your claim to Mr. Cunningham?—A. I did not.

Q. Did Mr. Cunningham ever claim any part of it or ask you for any part of it?—A. No, sir.

Mr. GRAY. You may take the witness.

Cross-examination by Mr. PUGH:

Q. You first became interested in the Alaska fields in 1903?—A. Yes, sir.

Q. And that was through a conversation you had with your brother, R. K. Neill?—A. Yes, sir.

Q. How soon after that did you meet Mr. Cunningham?—A. Oh, I could not say just exactly when; it was along that fall some time.

Q. Did your brother give you to understand that, or did you in any way learn what your obligation to Mr. Cunningham for his—A. (Interrupting.) No, sir.

Q. (Continuing.) For his services?—A. No, sir; nothing.

Q. Did you ever, in fact, promise to pay or contribute to Mr. Cunningham one-eighth of any land that you might acquire?—A. No, sir.

Q. Or to consent there might be issued to him one-eighth of the stock in any corporation, so far as your share in the stock was concerned, which might be formed?—A. No, sir.

Q. If Clarence Cunningham ever made any statement to you to the effect he would receive a one-eighth portion of any claim which might be located by him in this territory; is that statement true, as to your claim?—A. No, sir.

Q. Did you, at the time you became interested, as you have stated, know that any other persons were making locations of coal lands in the same immediate locality?—A. Which? Besides me?

Q. Besides yourself?—A. I knew my brother had been up there, and he told me about Clarence Cunningham locating other claims up there, but I did not know any of them but a few of them.

Q. You knew a few of them?—A. I knew that Mr. Finch and Mr. Campbell and my brother had one at that time.

Q. Any others that you now recall?—A. No; that is all.

Mr. HUGHES. That you knew at that time?

Mr. PUGH. Yes; that he knew at that time.

Q. Those were all?—A. Of the ones I knew, yes.

Q. Whose names you can recall?—A. Whose names I can recall. There might have been more in there, but I don't know whether there was any, or who they were.

Q. Did you then, or about that time, meet any of these other persons who were making these locations, and have any conference with them concerning any future operation, development, management, and disposition of the properties?—A. No, sir.

Q. Which you or they might acquire?—A. No, sir.

Q. When you met Mr. Cunningham, in the conversation which followed between you and Mr. Cunningham, did he in any way represent to you, or give you to understand, that these other persons for whom he had made locations would unite their claims for the purpose of operation?—A. No, sir.

Q. Or that they would hold them and operate them together and share equally in the proceeds of the mines?—A. No, sir.

Q. Had no understanding of that sort whatever?—A. No, sir; not with me.

Q. You knew at the time you were proposing to make a location of land up there in Alaska that they were in a very—in a wholly undeveloped territory, and were distant and difficult of access, did you not?—A. Yes, sir.

Q. You knew that the sole value of any land that you might locate and acquire would depend upon its coal deposits?—A. Yes, sir.

Q. And that in order to secure those deposits that some transportation would be necessary?—A. Yes, sir.

Q. Did you regard it as at all practicable, Mr. Neill, for you by yourself, or even in an association of other persons, profitably to mine coal from 160 acres of land in Alaska?—A. Well, I didn't give it a particular thought at the time.

Q. You were not contemplating the operation of the property?—A. No; through mine, not.

Q. Cunningham, from time to time, advised you what he was doing up there, and for what purposes he was spending the money you remitted to him?—A. Yes, sir.

Q. In what way did he communicate that advice to you?—A. He generally wrote me a letter.

Q. A letter?—A. Once in a while; yes; he generally wrote a small letter, giving the necessary facts, what he was doing, when he would draw on me for the money.

Q. I will ask you to examine the paper which I shall now hand you, and which has been heretofore offered in evidence as Government Exhibit 5, and ask you if you have examined it, and to state whether you were ever furnished with a copy of that paper [handing paper to witness].—A. I think I was.

Q. You think you received a copy of this?—A. Yes, sir.

Q. I will now ask you if at the time you received this paper your attention was attracted to the fact that in describing the coal lands up there Mr. Cunningham referred to all of the claims as being associated in the development work?—A. I never thought anything about it; never did; no.

Q. I call your attention particularly to this language, and ask if you remember of noting it at the time:

Our development to date has proven very satisfactory, and while not prepared to say, there is no question about the permanency or character of our coal; I will state that so far as known at the present time the quality is superior to anything on the Pacific coast.

And to this language in the succeeding paragraph:

Our development on Trout Creek, where all our work this winter is being concentrated, consists of four tunnels, being respectively 50 feet, 170 feet, 145 feet, and 180 feet.

And in the next paragraph this language:

On Clear Creek we have about 200 feet of tunnels with innumerable open cuts; and on Carbon Creek we have also done quite an amount of surface work.

And still further on in the same paper:

This winter we are probably working but seven men, which probably will be gradually increased as it becomes necessary to scatter them along the length of the claims, in order to prevent others from encroaching on our lines, this being the only way we can protect our interests until surveys are established and entries made.

Did you note that language then, or at any other time?—A. No, sir; I did not.

Q. You gave no consideration to it?—A. No.

Q. And placed no construction upon it?—A. No, sir.

Q. In like manner I will ask you to inspect the paper which I now hand you as being in evidence as Government Exhibit 6, and state whether you received that paper or a copy of it [handing paper to witness].—A. No, sir; I did not receive this one.

Q. You never received this one?—A. No, sir.

Q. I will now ask you to look at these two documents, being papers which have been offered in evidence as Government Exhibits 8 and 9, and ask you to state whether you received these papers from Clarence Cunningham, or copies of them, or of either of them [handing witness paper].—A. I don't think I have.

Q. Don't think you received either of those?—A. No.

Q. Then if you knew what way he was spending the money you sent him you got that knowledge from some other report than any shown to you?—A. Yes, sir.

Q. Did you preserve these reports or statements?—A. No, sir.

Q. What did you do with them?—A. I just merely told it to my brother when I would meet him once in a while.

Q. Do you know whether they were in form similar to these which have been shown to you?—A. No, sir.

Q. Do you remember whether they indicated he was keeping a common account of moneys received and expended on behalf of all the entrymen?—A. No, sir.

Q. You don't remember anything about that?—A. No, sir.

Q. Did you at any time confer upon Clarence Cunningham any power or authority to represent you in behalf of this coal claim, other than the one that is on file in relation to the entry?—A. No, sir.

Q. Neither verbally or written?—A. No, sir.

Q. And that represents the whole extent of his authority, does it?—A. It does, so far as I know.

Q. Now, you have stated that when the location was first made for you in 1903 that you had no agreement whatever with him in relation to his compensation.—A. Yes; that is right.

Q. Did you at any time subsequently have any such agreement or understanding?—A. In regard to the claims?

Q. In regard to compensation for whatever services he might render you?—A. No, sir.

Q. Did you make a subsequent location of the same land or lands in the same locality, in 1904?—A. Yes, sir.

Q. That was after the law of 1904 was passed?—A. Probably; that affidavit there that I had to sign before the notary public—

Q. Now, when you came to make that location, did you have any different or better understanding with Mr. Cunningham about what his compensation should be?—A. No, sir.

Q. Whatever right to compensation he may have had before still continued, did it?—A. Yes, sir.

Mr. PUGH. That is all.

Redirect examination by Mr. GRAY:

Q. What, if anything, did your brother tell you that Cunningham was going to get when you first went into this thing and authorized him to locate a coal claim for you? What, if anything, did your brother tell you that Cunningham was going to get for looking after and locating the claim, and looking after it afterwards?—A. Nothing more than a salary.

Q. He told you at that time he was getting a salary?—A. Yes, sir.

(And thereupon the further hearing of this inquiry was adjourned until 2 o'clock p. m.)

INQUIRY RESUMED.

DECEMBER 10, 1909—2.30 P. M.

Appearances: Hon. William J. McGee, United States special commissioner; Mr. James M. Sheridan and Mr. William B. Pugh, counsel for the Government; Mr. E. C. Hughes and Mr. John P. Gray, counsel for the claimants.

IGNATIUS MULLEN, a witness called on behalf of the claimants, after being duly sworn by the commissioner, testified as follows:

Direct examination by Mr. HUGHES:

Q. Your full name?—A. Ignatius Mullen.

Q. What is your age?—A. Twenty-nine years.

Q. Where do you reside?—A. Well, Juneau is my home, but my headquarters for the last two years has been Seattle.

Q. In what business have you been engaged in Seattle?—A. Commercial traveling.

Q. You are a son of P. M. Mullen, receiver of the land office at Juneau?—A. Yes, sir.

Q. When did you go to Juneau?—A. Beg pardon?

Q. When did you go to Juneau to live?—A. I went to Juneau in March, 1903.

Q. Where did you live prior to that time?—A. In Omaha, Nebr.

Q. How long did you remain in Juneau?—A. Well, I was in Juneau about a week.

Q. Then where?—A. I went from there to Treadwell.

Q. That is right near by; the Treadwell mine you mean?—A. Yes, sir.

Q. Were you in the employ of the Treadwell Mining Company?—A. Yes, sir.

Q. For about how long?—A. For about two years and two months.

Q. After that where did you go and what did you do?—A. I went from there to Seward, Alaska, Cook's Inlet country.

Q. You were employed on the Alaskan Central Road?—A. Yes, sir.

Q. For how long?—A. Eighteen months.

Q. Now, Mr. Mullen, while you were at Treadwell did you at any time meet Clarence Cunningham?—A. Yes, I met Mr. Cunningham in the spring of 1903—that is, I think around in April.

Q. Where did you meet him?—A. Why I met him at the Treadwell mines.

Q. He happened to be over there looking at the mine?—A. He was over there visiting the superintendent.

Q. The superintendent was an acquaintance of his, was he?—A. Yes, sir.

Q. You were introduced to him at that time?—A. Yes, sir.

Q. Did you about that time learn anything about the coal discoveries up in the Bering River district?—A. Well, I heard of them; a great deal of talk about them at that time, from different prospectors and men who had been up there.

Q. Did you ask Mr. Cunningham about it or did he say anything to you or did you have any conversation with him on the subject?—A. I inquired generally about the country and what he thought of it; something to that effect.

Q. Did you have any talk with him about locating any claim for you at that time?—A. No, sir.

Q. When did you next see Mr. Cunningham?—A. I think it was in the winter of 1904 or 1905.

Q. The latter part of 1904, you think?—A. I think it was the latter part of 1904.

Q. Where did you meet him then?—A. I met him over at Treadwell.

Q. In the meantime had you learned anything further about the coal prospects over in this Bering River district?—A. Yes; I inquired about it and talked to people that had been up there.

Q. At the time you met Mr. Cunningham you say it was at Treadwell, or was it in Juneau?—A. It was at Treadwell.

Q. Did you have any talk with him at that time?—A. In 1904?

Q. The latter part of 1904.—A. Yes.

Q. About locating a claim there?—A. Yes, sir.

Q. Tell what the conversation was as nearly as you can recall it?—

A. Well, I was talking to Mr. Cunningham and about different properties in the West, in the Prince William Sound country, and copper properties and things like that. I told him—

Q. Did you talk with him about this coal?—A. Yes. I was talking about the country in general, about coal property around in the Kayak district, and I told him I would like to have him locate me a mine up there; that I had some money to invest, and I thought it would be a good venture for me. In fact it was my duty at the mine to look after the coal for the different mines and during these years there was a great scarcity of coal on the Pacific coast.

Q. And you thought it would be a good investment?—A. I thought it would be a good investment in the future.

Q. What did he say, if anything?—A. Well, he told me he thought he could locate me and that he would, and I asked him how much it would cost me and he said between \$1,500 and \$1,600; something to that effect. Well, I told him when I could have the money. I had been waiting for what I thought would be a good investment and to locate me, and he said he would.

Q. Well, did he later draw on you for any sum?—A. Why he did later on. I told him to draw on me for whatever it would be.

Q. His drafts were paid, were they?—A. Yes.

Q. Now, Mr. Mullen, at that time I notice in the papers here you have not made any power of attorney. I call your attention to a power of attorney which I find in the government files in coal entry No. 5, purporting to have been executed by you, and ask you if that is your signature? [Witness examines paper.]—A. Yes, sir.

Q. It was executed in Juneau, and acknowledged before John W. Dudley, the register of the land office, was it?—A. Yes, sir.

Q. Did you send this power of attorney to Mr. Cunningham?—A. Yes, sir.

Q. Attached to the same paper I find an affidavit purporting to have been sworn to by you on the same date, and I ask you if that is your signature? [Witness examines paper.]—A. Yes, sir.

Q. Mr. Mullen, at the time of your conversation with Mr. Cunningham was there anything said between you and him in regard to his having any interest then or at any time in your coal location?—A. No, sir.

Q. Was there anything said about any plan or purpose to organize a company at any time in the future and transfer this claim or any other claim to that company?—A. No, sir.

Q. Did he discuss with you the subject of joint opening or operation of the mine between your claim and other entries made by him for other persons?—A. No, sir.

Q. Did you have any such conversation with anybody else?—A. No, sir.

Q. Have you had any such conversation with anybody at the time you made the affidavit and the power of attorney to which I have just called your attention?—A. No, sir.

Q. Had you any understanding yourself that you would enter this claim with the view or purpose of turning it over to any company or corporation or association of persons?—A. No, sir.

Q. Did you have any plan with respect, at that time, to the future operation of this claim as a coal mine, either than by yourself or in conjunction with anybody else?—A. No, sir.

Q. Did you locate it for any other purpose than as an investment, as you have stated, and if so, state what such purpose was, if any?—A. No, sir.

Q. Now, I show you from the same files application for patent, and ask you if that is your signature? [Witness examines paper.]—A. Yes, sir.

Q. It was sworn to before H. H. Hildruff, United States commissioner at Keeny Peninsula, on the 12th day of February, 1906; is that correct?—A. Yes, sir.

Q. That was when you were at Cooks Inlet, as you said?—A. Yes, sir.

Q. On the Alaska Central Road?—A. Yes, sir.

Q. At the time you made and swore to this application you stated in it:

I make entry for my own use and benefit and not directly or indirectly for the use or benefit of any other party.

Was that statement true at that time?—A. Yes, sir.

Q. At the time you made this application, or any time prior thereto, had you any understanding or agreement with any person whosoever that this entry, this application made by you, was for the purpose of securing title to a claim with a view of holding it for the benefit of anyone but yourself?—A. No, sir.

Q. Or with the view of transferring it to any corporation or association of persons to be owned or held or operated as a coal mine?—A. No, sir.

Q. I now show you from the same government files an affidavit purporting to have been signed by you before H. K. Love on the 10th day of December, 1906, and ask you if that is your signature? [Witness examines paper.]—A. Yes, sir.

Q. Where were you at the time you signed this affidavit?—A. In 1906?

Q. Yes; at the time you signed this affidavit for Mr. Love?—A. I was in Juneau.

Q. You saw Mr. Love personally, I take it from the affidavit?—A. Yes, sir.

Q. And talked with him at the time of signing this affidavit?—A. Yes, sir.

Q. Now, I call your attention to the following language which I read from this affidavit:

That said location was made for the sole use and benefit of the affiant, and has ever since so remained his and in his exclusive control: that at no time prior to location or at such time—

The word "or" is omitted here, apparently, which is in line with the others—I supply the word "or."

or since has affiant entered into any agreement, express or implied, or pledged himself by promise or otherwise, express or implied, by which the title to said land, or any part thereof or any interest therein, is to pass to any person or association whatsoever. That in event said claim goes to entry in

the United States land office at Juneau, Alaska, and receiver's receipt for the purchase price issues he will not be under any contract, obligation, or promise to sell or convey said tract to any person or persons or association, or to put the same into any company or joint holding for any purpose, or to otherwise dispose of same, but will be free in every way to hold said tract, to lease or sell it at any future time.

Now, I ask you, Mr. Mullen, so that you may now be subject to cross-examination with respect thereto, whether each of the statements which I have read were true at the time?—A. Yes, sir.

Q. Had you had, or prior to the date of the application, December 10, 1906, had any conversation with any person with reference to transferring your coal claim, either before or after patent, to any company or corporation, or to any association, or with reference to holding it for the benefit of any company or of any association of persons, or of any individual other than yourself?—A. No, sir.

Q. Had you had a conversation, agreement, or any understanding with anybody that you would hold it for the purpose of operating in conjunction with any other claims; that is, operating it as a coal mine?—A. No, sir.

Q. You subsequently paid the government price to the receiver of the land office?—A. Yes, sir.

Q. And received your final certificate and receipt from the register and receiver?—A. Yes, sir.

Q. These papers are among the files and bear date March 13, 1907. [Hands witness paper.] I will ask you if you received duplicates of them. This [showing] is the certificate of entry signed by the register, and the final receipt signed by the receiver?—A. Yes, sir.

Q. At the time you paid this money and obtained the final receipt, or at any time thereto, had you had any agreement or understanding with any person that you were to turn your claim over to any company at any time thereafter, or to any association?—A. No, sir.

Q. Or that you would hold it for the benefit of any association of persons?—A. No, sir.

Q. Or that you would hold the title to it and join your claim for the purpose of operating as a mine with any other entrymen or locators?—A. No, sir.

Q. Had you at any time prior thereto had any conversation in relation to any such subject with any person?—A. No, sir.

Q. I now call your attention to another affidavit which I find in the government files relating to your entry, and ask you if that is your signature? (Witness examines paper.)—A. Yes, sir.

Q. And purports to be signed before H. K. Love; sworn to before H. K. Love, is it?—A. Yes, sir.

Q. It is dated or headed "State of Washington, county of King." Was this affidavit made in Seattle?—A. Yes, sir.

Q. You saw Mr. Love there at the time?—A. Yes, sir.

Q. Had a conversation with him?—A. Yes, sir.

Q. And he wrote out this affidavit and asked you to sign it at that time?—A. Yes, sir.

Q. Were the statements true in it?—A. Yes, sir.

Mr. GRAY. What is the date of that?

Mr. HUGHES. That is dated August 17, 1907.

Q. I think you said that you in 1907—your headquarters—were in Seattle, and you were traveling for a business house there?—

A. Yes.

Q. Traveling back and forth; but the establishment for which you were working was in Seattle; is that what you mean?—A. Yes, sir.

Q. I call your attention to Claimants' Exhibit 3, which is a record of the meeting of certain of the defendant entrymen held in the city of Spokane on the 15th of May, 1907, and ask you to state whether or not you were present at that meeting? (Witness examines paper.)—A. No, sir.

Q. Look it over and answer me whether or not you ever received a copy of it?—A. No; I did not.

Q. Did you receive a deed from an attorney by the name of Wakefield for execution?—A. No; no, sir.

Q. I show you now Claimants' Exhibit 4, which purports to be a record of the proceedings of a meeting held on the 16th of July, 1907, in the city of Spokane, and ask you if you were present at that meeting?—A. No, sir.

Q. I observe that it is stated here that there were represented by proxy, among other persons, Mullen?—A. Yes, sir.

Q. As you were the only entryman by that name, I ask you what is your recollection in respect to receiving a notice of this, and who, if anyone, if you recall, you authorized to represent you?—A. I don't recall anything about this.

Q. I show you now Government Exhibit No. 10, which purports to be a copy of the proposition made between a committee appointed at a meeting in Spokane, July 16, and which I called your attention to in my last preceding question, and made by that committee with Mr. Eccles, representing the Guggenheim interests, and ask you if you received a copy of this? (Witness examines paper.)—A. No, sir.

Q. Do you know anything about this transaction; or when did you first, as far as you can remember, learn anything about it?—A. Regarding what?

Q. Regarding this Guggenheim proposition?—A. Why, only what I read in the papers.

Q. That is, recently?—A. Yes, sir.

Mr. HUGHES. That is all.

Cross-examination by Mr. SHERIDAN:

Q. Mr. Mullen, did you, in the year 1903 or in the year 1904, own any property of your own; and if so, where?—A. Why, I owned 160 acres of land in Lincoln County, Nebr.—that is, I purchased that.

Q. Was that land improved or unimproved land?—A. Well, it is partly.

Q. What did you grow on it?—A. Why, I don't recall what was grown on it.

Q. Did you own any other property in Nebraska?—A. No, sir.

Q. Did you own any other property anywhere else, and, of course, I mean during 1903 and 1904?—A. No, sir.

Q. Now, what position did you hold with the Treadwell Mining Company when you first became employed with them?—A. Why, I was working in the store.

Q. What position?—A. Well, I was a clerk there.

Q. At what salary?—A. At \$60 a month, and my board and room.

Q. Subsequently, I believe, and also in the year 1903 and 1904, if I am correct, you worked for the Alaska Central Railway?—A. Repeat your question.

Mr. SHERIDAN. Read the question.

(Question read.)

A. No, sir; not during those years.

Q. Well, when was it you worked for them, Mr. Mullen?—A. I started to work for them in 1905.

Q. Had there been any lapses between your employment in the Treadwell Mining Company and the commencement of your employment with the Alaska Central Railway Company?—A. Possibly about ten days; I don't just now recall.

Q. Now, please give us the substance of the conversation or conversations which you had with Clarence Cunningham prior to his locating a coal claim for you in Alaska, which induced you to take up that claim.—A. Well, I first met him in 1903, and I asked about the country, and I asked him if there was any coal up there, and about other matters which pertain to different things around that part of the country; but in the meantime I had met several people who knew Mr. Cunningham very well; knew him in the Coeur d'Alene, in fact, I talked with Mr. John W. McDonald, the superintendent of the Treadwell Mining and Milling Company, and Mr. Tubbs, who were officials there, about Mr. Cunningham, and they said he was a good, reliable man; and of course I was thinking about making an investment in some kind of property, and it being at that time part of my business to look after the coal for the Treadwell people, weighing it and sending it around to the different mines, and as I saw there was a big shortage of coal in those years, I thought it would be a good investment to get a claim; and when I met Mr. Cunningham again I told him I had been thinking it over and that I had some money, and I would like to have him locate me a claim up in the Kayak district.

Q. Now, Mr. Mullen, at any time prior to your making your location of your coal claim did Mr. Clarence Cunningham have any conversation with you wherein the subject of the method of developing your claim came up?—A. No, sir.

Q. So we are to understand you did not consider that phase of it at all prior to the location of the claim?—A. No, sir.

Q. Were you ever on the claim?—A. No, sir.

Q. Were you ever on any other of the adjoining claims now under investigation?—A. No, sir.

Q. When did you first make a payment of money to Clarence Cunningham, for the purchase of your coal claim?—A. I think it was in the winter of 1905.

Q. How much did you pay him the first time?—A. I think it was about \$800.

Q. What was that payment made for?—A. Well, I don't just recall; in fact, I don't know—I told him whatever the cost of it would be—in fact, I asked him how much the mine would cost me, and he told me between \$1,500 and \$1,600, so I didn't pay any attention to what the sum was paid for; I told him to draw on me for whatever was necessary until it was paid.

Q. Now, do I understand you he stated that at the time you made this first payment there would be due from you at that time a total of \$1,500 or \$1,600?—A. No, sir.

Q. Just then what did you mean in that connection?—A. Well, the general cost, I presumed, would be about \$1,600.

Q. Now, weren't you aware that your coal claim would include about 160 acres of land?—A. Well, I don't recall. I think, maybe; I couldn't say. I did not know at that time how many acres was in a coal claim.

Q. Did you at that time know the price at which the Government was holding coal lands for in Alaska?—A. Well, I don't remember.

Q. Did Mr. Cunningham, at the time he drew on you first for money, state that \$800 was all that he wanted from you at that time?—A. No, sir.

Q. What did he state?—A. I don't remember what he stated.

Q. Now, I understood you to say you had some money for investment at that time?—A. Yes, sir.

Q. How much did you have, Mr. Mullen?—A. Oh, I think it was about \$2,000.

Q. Where did you obtain this money?—A. Well, I started in to work when I was 16 or 17 years old for my father in the general mercantile business, and I worked for him about four or five years—up until, say, November, 1907—

Mr. HUGHES. You mean 1897, do you not?—A. Yes; 1897. Up to about November, 1902, and my salary was from my father; that is, he told me if I would start in and work for him and stay with him and stay with the business, he would give me \$50—lay aside \$50 a month for me, and pay my board and my clothes.

Q. You did not borrow any money for the purpose of taking up this coal land from anybody?—A. No, sir.

Q. Now, when did Clarence Cunningham draw on you again after this first payment of \$800?—A. I do not just recall when it was.

Q. Do you recall how much the next payment was?—A. I think it was about \$500.

Q. Did he make any other drafts on you subsequently for this coal claim?—A. Yes, sir.

Q. What do you recall the next amount to have been?—A. Well, I don't just remember the amount; I think it was \$100 or \$200.

Q. Do you know approximately how much your coal claim cost you altogether, from the time of your becoming interested in it down to and including the time of final receipt, and in that I include the price paid the Government?—A. About \$3,400.

Q. Were those drafts, if there were such, made on you personally?—A. Yes, sir.

Q. Did you personally pay them?—A. No, sir.

Q. Who paid them?—A. My father paid them.

Q. How was it that he paid them; explain that to us?—A. Well, my father always had, I guess, about \$2,200 for me; and every month I used to always turn my salary over to him for to keep; that is, keep for me.

Q. Yes?—A. And then when I went up to the westward, and to Seward, I also remitted my money to him.

Q. And he kept it on deposit there, and met these drafts out of your funds?—A. Yes; I told him to pay whatever Cunningham would draw on me, and also some other little matters that I had.

Q. How far were you located from Juneau when working for this Treadwell Mining Company?—A. About three and a half miles; across the bay.

Q. And when you were with the Alaska Central Railway, about how far from Juneau were you?—A. Well, about 2,500 miles, I guess.

Q. About 2,500 miles?—A. Something like that.

Mr. HUGHES. It is a country of magnificent distances.

Q. I now call your attention to Government Exhibit 3, which purports to be, among other things, a copy of what is known as the Cunningham journal, and I especially invite your attention to page 1, where under date of Wallace, Idaho, February 1, 1903, it is stated that "each subscriber shall have one-eighth of his stock issued to Clarence Cunningham, in consideration of his services in securing said land." Did you ever have any such arrangement as that with Clarence Cunningham?—A. No, sir.

Q. Did you ever see the original journal of which this purports to be a copy; and for that purpose I will ask you to scan it (handing witness Government Exhibit 3)?—A. No, sir.

Q. On page 23 of the copy of the journal, Government Exhibit 3, I find that your name is set out, and the amount of \$800 is placed opposite it, as an apparent—apparently having been made to Clarence Cunningham under the head of "Katalla, Alaska, January, '05." That was approximately the time when you made the first payment, was it?—A. Yes, sir—

Mr. HUGHES. Well, just a minute. It is improper, of course, to predicate cross-examination on any book or record that the witness says he knows nothing about and did not make.

The COMMISSIONER. He has a right to ask the question—

Mr. HUGHES. He has a right to ask the question, but without predicating it on some book not connected with some book or record connected with the witness. In fact, however, I think that is perfectly proper to ask the witness.

Q. On this same page, on this same exhibit, I find the following statement, and I wish to quote it for the purpose of predicating a question upon it: "Each of the above persons subscribe for one interest; the last-named pay but one-half of amount due for his, but will pay balance at any time." I now ask you if you recall whether or not at the time you made this first payment of \$800 Clarence Cunningham then notified you that the amount due at that time was sixteen hundred dollars?

Mr. HUGHES. Now, Mr. Commissioner, recognizing that the commissioner has a little power here, without at all times remaining silent as to the proper methods of cross-examination, I desire to make the objection that this is not proper cross-examination, and that it is incompetent on any kind of examination, direct or cross, to found an interrogatory upon any document or instrument not made or authenticated by the witness, and that the quotation made is not a proper basis for the question actually propounded to the witness as confusing and misleading, and the making of it is entirely improper.

The COMMISSIONER. I think the question can be answered.

Mr. HUGHES. The question is not objected to—that is, the real interrogatory, or the part of it—

The COMMISSIONER. What he prefaced the question by, you mean?

Mr. HUGHES. Yes.

The COMMISSIONER. The question is a proper one, it seems to me; he can answer it.

Mr. HUGHES. I mean that my objection don't run to the question, but upon what he prefaced the question by, and the witness may be led to assume that he predicates it upon. It is misleading to the witness and may be naturally inferred by the witness to call upon him for some recognition of or authentication of the document here, which is quoted.

The COMMISSIONER. No; I don't think that answer would call for any authentication of the document he reads here, but he simply asks the question that if, at a certain time, there was a certain understanding. I think the question can be answered.

Mr. SHERIDAN. Read the question.

Mr. HUGHES. I merely make the objection because I wish to call attention in the record to what, manifestly in my mind, would be an objection that would be sustained by a court in the course of a proceeding before a court, and not only sustained, but sustained with rebuke. That is all I care to say on it.

The COMMISSIONER. Read the question to the witness.

(Question read.)

A. I don't recall it.

Q. You did, eventually, and before the time of the final receipt, make all the payments that Mr. Cunningham said were due from you to him in that connection, and for which he drew on you?

Mr. HUGHES. I object to that question as misleading, and involving with the question the inference that a conversation occurred to which the witness has not testified. In other words, the question conveys to the witness one idea, whether he paid the drafts drawn and involves in its language connection with and incorporation with assumed conversations which is not shown by the witness he ever had.

The COMMISSIONER. He may answer the question.

A. I don't know.

Q. Mr. Mullen, do you know if, down to and including the time of final certificate, there was still any balance due from you to Clarence Cunningham on the draft which he had made on you?—

A. I can not recall it.

Q. Mr. Mullen, I wish to ask your attention to one of the original entry papers for your claim, already in evidence, which is described as the affidavit of agent as to character of improvements, signed by Clarence Cunningham, on January 2, 1907, and executed before John W. Dudley, Register of the Juneau, Alaska, land office; and in order to predicate a question on this document, I wish to quote a part of it:

That the nature of said improvements is as follows: A fine graded trail leading from Trout Creek through this claim, several cuts and openings made to explore surface values, a joint ownership in 2,000 feet of tunnels driven on the coal measures from Trout Creek, to explore the character of the coal and coal measures at a depth of 1,500 feet below the above-named surface openings, the sum of \$2,000 having been spent thereon.

I wish to ask you if at any time you had any conversation with Clarence Cunningham concerning the improvements to be made on your claim?—A. No, sir.

Q. I now invite your attention to an affidavit also found in the original entry papers, bearing your signature, and executed before Special Agent H. K. Love on August 17, 1907, in the State of Washington, County of King, to which attention has already been called,

and ask you to give us briefly the circumstances under which this affidavit was made.—A. Well, I don't just recall the conversation. I met Mr. Love, and he wrote this out, and he asked me to read it over, and I read it over and signed it.

Q. You can not recall anything else about it?—A. I don't recall anything about it.

Q. I now call your attention to another affidavit found with the original entry papers made in the District of Alaska, Juneau land district, on the 11th day of November, 1907, by P. M. Mullen, and executed before H. K. Love, special agent. I ask you to examine it and state whether you had any knowledge of such an affidavit, and of the contents therein set out.—A. No, sir.

Mr. HUGHES. Now, in order to be fair with the witness—

The COMMISSIONER. This is whose affidavit?

Mr. HUGHES. His father's affidavit. I want to make this record at this time. I want to ask Mr. Sheridan if in his questioning he meant to ask this witness, and to have the witness answer, as to whether he had any knowledge of the making of this affidavit or of the fact that it had been made, or whether, as his question might imply, he had any knowledge independently of any of the matters which are referred to in the affidavit. The witness might well answer the one in the negative as the other in the affirmative, and I think the witness has done that.

Mr. SHERIDAN. I submit that might be properly brought out on redirect.

Mr. HUGHES. No; I submit it is misleading to the witness and unfair to the witness. I don't believe it is the purpose of this Government to try to make a witness speak on record something he did not mean to be the truth. That is the purpose of my making this objection.

Mr. SHERIDAN. The question has no such purpose, Mr. Hughes.

Mr. HUGHES. That is why I propound this question, to find out. Of course, if you decline to answer it, it is your privilege.

Mr. SHERIDAN. Mr. Mullen, I now hand you Government Exhibit 29, which contains the articles of incorporation of the Behring River Railroad Company, and ask you if you have ever at any time, since you became—since you made your coal-land location in Alaska—down to and including the present time, had any interest in such an organization or any knowledge of it [handing witness paper]?—A. No, sir.

Q. Did you from time to time, Mr. Mullen, receive statements which were sent out by Clarence Cunningham to the various entrymen?—A. No; I remember, I believe, of receiving one statement.

Q. One statement?—A. Yes.

Q. I now hand you Government Exhibits 5, 6, 7, 8, and 9, and ask you if you can identify the one you received among them?—A. I don't just recall any of them. I might possibly one, but I don't remember. [Witness hands paper to counsel.]

Mr. GRAY. What number is that?

Mr. SHERIDAN. That is No. 8.

Q. You do not recall any other one than this one to which you refer, Mr. Mullen?—A. No, sir.

Q. Do you recall where you were at the time you received it?—A. I don't know just where I was when I received that statement.

Q. Did you, at any time, from the time you became interested in your coal claim, in Alaska, down to and including the time of final receipt for the same, consult any counsel in regard thereto?—A. No, sir.

Q. Have you any other interests in Alaska, or had you had, from the time you became interested in your coal claim down to and including the time of final certificate?—A. Since the time I became interested in it?

Q. Down to the time of final certificate in 1907?—A. Well, I was some time in the Susitna River country, and on the Yetna River in a placer claim.

Q. That is all the other interests you have?—A. Yes; that is all.

Q. Did you ever attend any meeting of the other entrymen now concerned, or any of them, from the time you located your claim in Alaska, down to and including the time of final receipt in 1907?—A. No, sir.

Q. Did you ever have any correspondence with any of them during that period?—A. No; I don't recall any.

Mr. SHERIDAN. That is all.

Redirect examination by Mr. HUGHES:

Q. Up to the time you obtained your final receipt, were you acquainted with any other of the entrymen who are defendants in this proceeding, except Mr. Cunningham?—A. No, sir.

Mr. HUGHES. Now, Mr. Commissioner, there is one other question I want to ask this witness, in justice to the witness in this record:

Q. When you were shown an affidavit made by your father, did you read that affidavit over before answering the question propounded by Mr. Sheridan?—A. Well, the affidavit he showed me—what I inferred from him was, did I know anything about this affidavit being made.

Q. You did not read the affidavit?—A. No.

Q. Or know anything about it?—A. Don't know anything about it.

Q. Did you answer it immediately so that Mr. Sheridan knew that you could not have read its contents?—A. Yes; I didn't read it.

Mr. HUGHES. That is all, sir.

Recross-examination by Mr. SHERIDAN:

Q. Did I ask you to examine the affidavit, and hand it to you for that purpose?—A. I don't recall it. What I inferred from you was did I know of this affidavit.

Q. Do you recall whether I did or not hand it to you?—A. I don't really remember.

Mr. SHERIDAN. I ask the commissioner to state of record whether I handed him the exhibit? Did I give you an opportunity to look at it before you answered?—A. Yes; you gave me that affidavit.

Mr. SHERIDAN. That is all.

The COMMISSIONER. Are there any further questions?

Mr. HUGHES. No.

Mr. SHERIDAN. If he did not take the time to read it that is not my fault.

(And thereupon the further hearing of this inquiry was adjourned until 9.30 a. m., December 11, 1909.)

DECEMBER 11, 1909—9.30 A. M.

INQUIRY RESUMED.

Hon. William J. McGee, United States special commissioner; Mr. James M. Sheridan, Mr. William B. Pugh, counsel for the Government; Mr. E. C. Hughes, Mr. John P. Gray, counsel for the claimants.

FRED CUSHING MOORE, a witness produced on behalf of the claimants, being duly sworn by the commissioner, testified as follows:

Direct examination by Mr. GRAY:

Q. State your name, your residence, and your occupation, Mr. Moore.—A. Fred Cushing Moore; residence, Boise, Idaho; at the present time state mine inspector. Prior to this—

Q. State mine inspector for what?—A. For Idaho. Prior to the first of this year I resided in Wallace, Idaho. I have been practicing the profession of mining engineer.

Q. How long have you been engaged in mining engineering, and, generally, what has been your experience in mining, Mr. Moore?—A. I have been in the mining business for the past ten years. Most of the time I resided in the Coeur d'Alene district. I have also been in the northern part of Washington and Montana.

Q. In that time have you had practical experience in the operation of mines, and opening up of mines, and mining claims?—A. I have been most of the time more or less connected with the direct operation and development of mining property.

Q. Are you acquainted with Clarence Cunningham?—A. Yes, sir; I am.

Q. How long have you known Mr. Cunningham?—A. I first met Mr. Cunningham in the summer of 1900.

Q. When did you first hear anything of this coal country in Alaska, Mr. Moore?—A. I think it was the fall of the year of 1902, in a conversation with Mr. Cunningham, with whom I was associated in some mining ventures in the Coeur d'Alene. He told me that his brother in Spokane had become interested in some oil and coal deposits in Alaska and desired him to go up there and look over the field. From the description he gave me I considered it very interesting and asked him to give me some further data upon it on his return.

Q. Do you know whether or not he went up to Alaska at that time?—A. I guess he did. He said he returned along in the winter some time.

Q. Did you see him?—A. At which time I saw him a number of times. He was living in Wallace, and as I was also I frequently met him.

Q. What conversation, if any, did you have with him before that time when you saw him after his return from this trip to Alaska?—A. He told me of the oil and coal deposits there and had samples of both coal and oil. I looked at those and considered that it was an attractive looking field and told him that I would like to become interested in such a deposit.

Q. What did he say as to whether he had located any claims at that time?—A. As I remember, he had at that time some options on some ground that had been located up there.

Q. Did you state to him that you desired to have a coal location made for you, or to acquire a coal location there in Alaska?—A. Yes, sir; I did.

Q. At that time did he tell you how much money it would cost?—A. I think he did. He thought it would cost in the neighborhood of \$2,000 or \$3,000, something of that kind; he said—

Q. Did he tell you how much money would be required in the beginning?—A. Why, I put up \$500 at that time, and I think that that was all he required at that time.

Q. At that time did you have any specific agreement with him as to what he was to receive for his services in looking after your claim and going up and making the location?—A. Well, I don't know as it was at that time, but—

Q. I mean when you first saw him there in 1902 or 1903?—A. Well, I didn't at that time, but later on—

Q. Well, I will get to that if you will permit me. Did you see him at any subsequent times during the year 1903?—A. Yes, I saw him a number of times.

Q. Did you see him—did he tell you when he first saw you there that he was going to return to Alaska?—A. Yes, I think so. He intended to. I don't know whether he had definite plans at that time or not.

Q. At that time did you know he was endeavoring to interest other people in having him secure coal locations for them in Alaska?—A. Yes.

Q. Did he advise you of the names of any persons who had agreed that he should locate a claim for them in Alaska?—A. Why, I heard the names. I didn't know definitely of anyone else other than Mr. Jones, who lived there in Wallace. I knew that Cunningham had talked to him, but as to the details of any arrangements with any other party I have no knowledge.

Q. You say you saw him when he came back from the next trip to Alaska in 1903?—A. Yes, sir.

Q. About when was that, as nearly as you can remember? I don't care for the month, if you know it was in the spring or summer or fall or winter, of what it was.—A. Why, it seems to me it was in the summer. He made several trips. I don't know which was his next trip, whether he went up and came directly back or whether he remained up there some time.

Q. At any time during that year did he again see you and tell you he had been back to Alaska and had taken up these options of the squatters that he had originally spoken to you about?—A. Yes, sir; he did.

Q. You are not just sure of what the date was?—A. No; I am not.

Q. At that time did he make any report to you as to having secured a coal claim for you in Alaska?—A. I don't know whether it was at that time or some subsequent time but he told me he had secured a claim for me.

Q. At or about that time did you have any talk with him as to any arrangement or understanding between you as to what he should receive for making the location and looking after the claim for you?—A. Yes; there was some talk at that time.

Q. I wish you would state, Mr. Moore, what that conversation and talk was; the substance of it.—A. Cunningham told me that he

thought it was fair that I should give him a one-eighth interest in my claim for locating me and looking after my interests up there.

Q. What did you say?—A. I told him it was agreeable to me.

Q. You so understood at that time?—A. Yes, sir.

Q. Did he have any samples of the coal with him, Mr. Moore, at that time?—A. Yes; I think so. I had seen them prior to this time.

Q. Any analyses of it?—A. I think so.

Q. Is there anything else that you particularly remember concerning that matter at that time?—A. No; I think not.

Q. I now ask you if you know whether or not he again returned to Alaska subsequent to that?—A. Yes; after that he made several trips.

Q. Did you see him again at any time, Mr. Moore, in that year or subsequently? Did you have any conversation with him in relation to this one-eighth interest or in relation to what he was to receive in looking after your claim?—A. Yes; I saw him several times after that and in talking with him about that proposition he told me that he had come to the conclusion that he couldn't carry on the agreement as it had been, and that he would collect a salary from the different entrymen who were putting up the money for the exploration of the field.

Q. When was that as nearly as you can remember?—A. Well, it was in the fall or winter, I should say, of 1903.

Q. When Mr. Cunningham was out from Alaska?—A. Yes, sir.

Q. On one of his trips?—A. Yes.

Q. Where was that conversation had?—A. Held in Wallace.

Q. What, if anything, did you say to him concerning that matter at that time, and his receiving a salary, calling that other understanding that you had with him, off?—A. Well, that was also acceptable. I didn't go into the details of the discussion of it. It was in his hands to handle and I relied on his judgment in the proposition.

Q. Mr. Moore, I call your attention to a paper which is included in your application papers, in coal entry No. 20, a power of attorney executed on the 29th of July, 1904, and ask you if that paper was executed by you?

(Witness examines paper.)

A. Yes; I guess so. It was.

Q. It is signed Mr. Moore, "F. Cushing Moore." Were you at any time subsequent thereto required to execute another power of attorney?—A. It seems to me I was.

Q. I call your attention to one which was executed on the 30th day of January, 1906, before Albert H. Featherstone, notary public. Is that your signature?

(Witness examines paper.)

A. Yes, sir.

Q. I notice that is signed "Fred Cushing Moore." Did you know any reason why you were required to make this second power of attorney other than that in this first one you had signed your name "F. Cushing Moore?"—A. I don't recall why I made the second one, but I had the impression that there was a second one made.

Q. It was sent to you for the purpose of making it?—A. Yes, sir.

Mr. GRAY. I say that for the reason that I do not understand any other reason myself, except that his other power of attorney was executed as "F. Cushing Moore."

Q. Mr. Moore, at the time you executed that power of attorney, on the 29th of January, 1904, when was that with reference to the time

that Mr. Cunningham had told you he couldn't go ahead on the first proposition he had with you and that he was going to collect a salary for his services?—A. Well, this was subsequent.

Q. Which was subsequent?—A. This power of attorney was subsequent to the conversation in which the salary proposition was mentioned; the original agreement was abrogated.

Q. Mr. Moore, who was to pay this salary, if you know?—A. The salary was to be paid proportionately by the several entrymen.

Q. What several entrymen?—A. Whom Cunningham represented at the coal field.

Q. I call your attention, Mr. Moore, to an affidavit executed on the 20th of October, 1904, before M. J. Flohr, included in the same application papers. Did you execute that affidavit?

(Witness examines paper.)

A. Yes, sir.

Q. I call your attention to the following language contained therein:

I further swear that I am now in the actual possession of said coal lands, through my agent and attorney in fact, and make entry for my own use and benefit and not directly or indirectly for the use or benefit of any other party.

Was that statement true at the time you made that affidavit?—A. It was.

Q. Had you at that time any agreement, contract, or understanding, expressed or implied, with Clarence Cunningham whereby he was to have a one-eighth interest, or any interest, in your claim at any time in the future?—A. I had no agreement or understanding with anyone. I hoped, of course, that at some time I might be able to consolidate my claim with somebody else's, or sell it in some way, and reap the profit of the investment up there, but at that time I had absolutely no agreement with anyone.

Q. And the agreement—what had become of the agreement that you have testified to having had at first with Mr. Cunningham?—A. What became of it?

Q. What had become of it at that time?—A. It had been abrogated.

Q. At the time you made that affidavit—I think you volunteered the information to the other questions which I would have asked you, so I will not pursue that any further. I call your attention to an application for patent sworn to on the 30th of January, 1906, before Albert H. Featherstone, notary public; did you execute that?

(Witness examines paper.)

A. Yes, sir.

Q. I now call your attention to the following language contained therein:

That I am now in the actual possession of said land through my duly authorized agent, Clarence Cunningham, of Kayak, Alaska, whom I have heretofore appointed to act as such for the purpose of making record location and entry for me in my name, whom I have appointed as my attorney in fact for the purpose of making and filing my application and making entry of the same for me. Through him I make entry for my own use and benefit, and not directly or indirectly for the use or benefit of any other party.

Was that statement true at the time you made it?—A. It was.

Q. At that time, were you under any contract or agreement of any kind, expressed or implied, or were you under or did you have any understanding of any nature by which the title of the claim for

which you were applying for patent, should inure, or any interest in it—should inure to the benefit of any other person other than yourself?—A. No; I had no contract of that kind.

Q. Did you have—were you under any promise or obligation of any kind or character by which any interest in your claim, when you should acquire title to it, should inure to the benefit of Clarence Cunningham or any other person than yourself?—A. I was not.

Q. Did you have at that time any contract, obligation, or understanding of any nature, under or by the terms of which your claim or any interest in it should be, when title was acquired, or at any time, turned over to a company or a corporation or association, then or thereafter to be formed?—A. There was no agreement of that kind at all.

Q. At that time had you any understanding or agreement or contract, or were you under any promise or obligation to consolidate your claim or any interest in it with any other claim or any other entrymen or any person whatever for the purpose of mining coal or for any other common holding?—A. I was not.

Q. I call your attention to an affidavit sworn to on the 23d of February, 1907, before Roy H. Kinsbury, notary public, heretofore referred to as the Love affidavit, and ask you if you executed that instrument?

(Witness examines paper.)

A. Yes, sir; I did.

Q. I call your attention to the following language contained therein:

The said location was made for the sole use and benefit of the affiant and has ever since so remained his, in his exclusive control. And at no time prior to location or at any such time or since has affiant entered into any agreement, expressed or implied, or pledged himself by promise or otherwise, expressed or implied, by which the title to said land, or any part thereof, or any interest therein, is to pass to any other person or association whatsoever. That in event said claim goes to entry in the United States land office at Juneau, Alaska, and receiver's receipt for the purchase price issues, he will not be under any contract, obligation, or promise, to sell or convey said tract to any person or persons or association or to put the same into any company or joint holding for any purpose or to transfer or dispose of the same, but will be free in every way to hold said tract, to lease or sell it at any future time.

Were each of the statements contained therein and which I have read to you true at the time you made that affidavit?—A. They were.

Q. I call your attention to the following language from that affidavit:

That he does not know any person or persons or associations that intend or contemplate the leasing or purchase of said tract.

Was that statement true at the time you made it?—A. Yes, sir.

Q. Mr. Moore, you, subsequent to that time, paid the United States for this land?—A. Yes, sir.

Q. To whom did you pay the money?—A. The money was paid through a Seattle bank.

Q. To whom?—A. I think it was paid to Cunningham. It was paid through the bank to the receiver of the land office in Juneau.

Q. It was paid Cunningham, you say?—A. I don't remember how it was paid. It was paid through a Seattle bank, I am quite sure.

Q. You don't know who it was paid to?—A. I think there was probably a draft made by the Seattle bank.

Q. Well, I don't care what you think. What did you do? Did you pay any money for your land?—A. I made a check.

Q. What did you do with the check?—A. Well, I don't know whether it was made to the Wallace bank or sent on to the Seattle bank, or whether it was sent direct to the Seattle bank, but I know it was cashed and the check returned to me.

Q. And the money sent to the receiver of the United States land office at Juneau?—A. Yes, sir.

Q. Did you receive from him final certificate of purchase?—A. Yes, sir.

Q. I call your attention to the duplicate receipt which is contained in these papers. I will ask you if that is the duplicate of the certificate of final purchase which you received?

(Witness examines paper.)

A. Yes, sir.

Q. Had you at that time made any contract or agreement, or did you have any understanding, or had you pledged yourself by any promise or obligation, express or implied, by which the title to the coal claim which you were purchasing of the United States, or of any interest therein, should at any time inure to the benefit of any other person other than yourself?—A. I had not made any agreement of any kind.

Q. Were you under any agreement, contract, obligation, or promise of any nature whatever by which your claim, or any interest therein, should at any time in the future be turned over to any corporation, company, or association then or thereafter to be formed?—A. I had not.

Q. Did you have any agreement at that time with Clarence Cunningham or any other entryman in that district, of any nature whatever, respecting your coal claim?—A. No; further than he represented me as attorney.

Q. I mean by which any interest in it should inure to anyone's benefit but yourself?—A. No, sir; I had no agreement with anyone.

Q. Were you under any contract, understanding, or agreement of any nature, expressed or implied, by which you were to consolidate your claim or combine it or unite it with any other claim or claims for the purpose of mining or for any joint use or holding?—A. No; I was not.

Q. At that time were you—did you have such dominion over that property that you could sell, lease, or dispose of the same free from any obligation or promise of any nature whatever?—A. You mean after receiver's receipt?

Q. At the time the receiver's receipt was issued?—A. Yes, sir; I could.

Q. Mr. Moore, you knew that Mr. Cunningham—did you see Mr. Cunningham at any time subsequent to that conversation which you say you had with him in 1903 in which he said he could not go ahead with the first understanding that he had with you and that he was going to charge a salary. Subsequent to that conversation, did you have any conversation with him prior to your payment to the Government for the land?—A. Yes; I believe I saw him several times.

Q. At any of those subsequent conversations was anything said by you or Mr. Cunningham which was inconsistent with the fact that

you were to own and hold that claim for yourself?—A. No, sir; nothing at all.

Mr. PUGH. We wish to note just a formal objection to the question as calling for his conclusion; anything inconsistent.

The COMMISSIONER. I think the objection is well taken. It is probably calling for a conclusion of the witness instead of the facts.

Q. What, if any, understanding or agreement did you have with Mr. —

Mr. GRAY. I am perfectly willing that that question and answer should both be stricken out if satisfactory, as the objection was sustained. I will withdraw that question.

Q. Mr. Moore, did you know anything about a meeting that was held in this city on the 15th of May, 1907, of entrymen who had coal claims in the Kayak district?—A. I knew of it. I did not attend it.

Q. I hand you claimants' Exhibit 3 and ask you if at any time you received a copy of that instrument?

(Witness examines paper.)

A. I think I did.

Q. I call your attention to the last paragraph thereof, which reads as follows: "Thereupon, on motion of Mr. Sweeney, seconded by Mr. Finch, the chairman was authorized to appoint a committee of five, who should organize a corporation for the purpose of acquiring the coal claims of those present and those of such other claim owners as might desire to join the corporation, the committee to secure deeds to the mining claims and to issue receipts therefor and to take all necessary steps to complete the organization of the company ready for the transaction of business. The chair thereupon appointed a committee of five." Do you recall that, Mr. Moore?—A. Yes, sir.

Q. Pursuant to the action which was taken there, did you execute a deed at any time?—A. Yes; I executed a deed.

Q. What did you do with it?—A. The deed was sent to Mr. Wakefield, I think.

Q. An attorney in this city?—A. Yes, sir.

Q. I call your attention to the minutes of a meeting held on July 16, 1907, in this city, claimants' Exhibit No. 4, and ask you if you were present at that meeting?—A. Yes, sir; I was.

Q. And at that meeting a committee was appointed to go to Salt Lake and negotiate with some representative—Mr. Eccles, or some other representative—of the Guggenheims?—A. Yes, sir.

Q. What was your understanding of the power which was delegated that committee?—A. Well, I understood the committee was to go down there to see what arrangements could be made with the Guggenheims, who were building a railroad in close proximity to the coal district in Alaska, and to report at some future time as to what they could accomplish.

Q. What understanding did you have of the power of the committee to bind you to convey your claim or to otherwise dispose of it?—A. Well, I didn't consider that I would be bound by any action that they might take at that time.

Q. I call your attention to the following language in claimants' Exhibit No. 4: "All the members present agreed to ratify any action taken by said committee." What have you to say concerning that?—A. Well, that was not my understanding of it.

Q. Subsequent to that time, did you see a copy of the Government Exhibit No. 10, which was a memorandum drawn up at that Salt Lake meeting?—A. I don't think I ever saw that agreement. I knew of the agreement, but I don't believe I ever saw a copy of it.

Q. Were you advised of the terms of the memorandum which was made there?—A. Yes; I was.

Q. What, if any, action did you take in the matter?—A. Well, I took no action in the matter.

Q. Did you express your assent or dissent thereto to any other entrymen?—A. I didn't express my assent, but I did express my dissent. I didn't like the proposition, but I never said anything to Mr. Cunningham at that time, because I didn't see him.

Q. Now, I call your attention, Mr. Moore, to Government Exhibit No. 11, and particularly to the signature to the last affidavit contained therein and ask you if that is your signature?

(Witness examines paper.)

A. Yes, sir.

Q. You made that affidavit, did you? Look at it.

(Witness examines paper.)

A. Yes, sir; I made that.

Q. State under what circumstances and what the facts are for the making of that affidavit as you recall them.—A. At the time that I made the affidavit I was misled in the proposition to a certain extent. I was called up over the phone at lunch time by a man purporting to be Mr. Glavis, the special agent of the Interior Department, and he said he was at the Ryan Hotel and would like to see me, but that he went out on the noon train, and I told him that I would finish my lunch and come down. I went down and inquired for him at the Ryan Hotel, and they told me he was in lunching next door at the grill. So I had them point him out to me and I went in and introduced myself. He and another agent were eating lunch, and I sat down and talked with them while they were finishing their lunch, and he told me he had seen a number of the other entrymen and, as I understood, I was the last one that he had to see in order to close up the matter; that he had been sent out to obtain additional information, and that he was through and would report very shortly to the department, and he felt very confident at that time there would be no trouble in receiving our patents. I told him I had been in the matter a long time and put up considerable money and hoped the matter could be expedited and that we be given our patents. I considered that I was entitled to my patent and would like to make arrangements to get some of the money out that I had put in, and he told me at that time that he knew of no reason why the patents should not be granted. He asked me, though, whether I had entered into any agreement to transfer my interest—my claim—and I said I had not. He says, "You haven't entered into any agreement with the Guggenheim people to transfer it?" and I said, "I had not." So when he concluded dinner he asked me if I would make an affidavit to the effect that I had not entered into any agreement to transfer my claim or any portion thereof to anyone, and particularly to the Guggenheims, and I said, "Certainly; I would." He said Mr. Jones had made an affidavit—

Q. Referring to Mr. O. D. Jones?—A. Mr. O. D. Jones and he says, if you will just make an affidavit corroborating Mr. Jones's affidavit, why, it will be all that is necessary, and there was a very

short time left before the departure of the train and he wrote out an affidavit corroborating Mr. Jones. He read over Mr. Jones's affidavit to me, as I remember it, and then handed me the paper, which I glanced over, an essential point of which I considered was the sale of the property to the Guggenheims, and I paid very little attention to the rest of the affidavit, being the part referring to the understanding which impressed itself on my mind with reference to the meeting in Spokane, in May, 1907, or of the agreement that we had had when we transferred the deed to the company.

Q. The other agent who was present was Mr. Jones, who is here now, Mr. Moore?—A. Yes, sir.

Cross-examination by Mr. PUGH:

Q. You stated that it was in the fall or winter of 1902 that you first met and conferred with Mr. Cunningham about the Alaska coal lands?—A. That is my first knowledge of it.

Q. That was in the winter of 1902-3?—A. Yes; that is when I first went into it.

Q. He told you that his brother who resided in Spokane was interested in this coal and oil field there?—A. Yes, sir.

Q. How soon after that did you authorize him to make your location?—A. In the spring of 1903, after he had returned from his first trip, he held some options upon some land, and that was at the time that I first became interested in the lands in that district.

Q. At that time, at his suggestion, you agreed to give him a one-eighth interest in the lands you might acquire under your location?—A. Yes, sir.

Mr. GRAY. Well, now, just a minute. Well—I suppose that is proper cross-examination—go ahead.

A. Why, I did not say it was at that time, but it was about that time.

Q. About the time you made the location?—A. No; the time—this is about the time—I would not say whether it was before he made the location for me or not, but he had some options in the first place, when I first became interested with him, or contemplated going in with him, he held some options upon some lands up there, which had been located by somebody else—I did not know very much of the details of that further than that.

Q. When was it that anything was first said about compensation? Was it before or after you first made the location, or at the time of your giving him authority to make such location?—A. Well, I think he made the location for me in 1903, which was not the location I made final proof on.

Q. Yes; I understand that. Then you subsequently, and in the year 1904, authorized him to make a new location?—A. Yes, sir.

Q. And at that time you gave him a written power of attorney?—A. Power of attorney.

Q. To do that for you?—A. Yes.

Q. At the time you made the first location, I believe you stated you knew only a Mr. Jones, who resided in Wallace, as being among the locators of land up there?—A. I hardly think I said that; I only knew the one. He was the only one I talked to, because he was the only one near where I lived that I knew.

Q. You knew others?—A. I have heard that my uncle and some of his sons and some of his associates in Wallace had become interested; but I did not talk with them, because I did not see them.

Q. Is Miles C. Moore your uncle you refer to?—A. Yes, sir.

Q. And his sons, Walter B. and Frank A. Moore—A. Are cousins of mine.

Q. At that time, then, or did you later meet and confer with those persons?—A. No.

Q. Concerning the formation of any association or corporation for the development of the properties which you might locate?—A. No, sir; I never met or conferred—to whom do you refer to—my relatives?

Q. To the persons you knew who located claims, as you said you knew that your uncle, Miles C. Moore, and his sons and Mr. Jones had made such locations.—A. I never have met or conferred with my uncle on the coal lands at any time, to my knowledge. I have, perhaps, mentioned it incidentally, but I did not see him for a number of years after that, and never had any correspondence concerning it.

Q. Did you meet or confer with any other of the other persons that you have named as being acquaintances of yours?—A. Not at that time. The only time I ever met and conferred—there was any conversation with Mr. Cunningham—was at the meeting at Spokane in July, 1907.

Q. Now, you have stated in your testimony in chief that you subsequently abrogated the agreement with Mr. Cunningham by which he was to receive a one-eighth interest in the land he located for you. When did you say you annulled that agreement?—A. I did not state definitely. It was along in the summer or fall of 1903. I can not give the exact date, but it was about that time.

Q. And it was before you made the relocation, or the new location under the law of 1904, was it?—A. Oh, yes; yes.

Q. At that time you substituted an agreement for a salary?—A. No; that—there was no agreement over that, but I had understood from him that he would expect a salary, and that had been paid at that time, as I remember it; he had been paid a salary prior to that time.

Q. Did he state that he had that salary due?—A. Why, there was nothing definite stated to me about a salary, and the first time I knew about what he was charging was at the time he made a statement at the meeting.

Q. Did he give you to understand that the other locators were contributing to the payment of it, whatever it was?—A. Yes, sir.

Q. Did you know what your proportion of it would be definitely?—A. At that time?

Q. Yes.—A. No; I did not.

Q. Did you understand that you were paying an equal part of it with all of the other locators?—A. Yes; I did.

Q. Was there anything understood between you at that time as to the reason for a change made to a stated compensation, and did he state the compensation?—A. No, sir; I don't think that that matter was discussed.

Q. That was the only agreement as to compensation you ever had with Mr. Cunningham?—A. Yes, sir.

Q. And it never was in any way modified or altered by any subsequent agreement or understanding?—A. No, sir.

Q. At the time you first authorized Mr. Cunningham to represent you in making locations of land in Alaska, did he make any representations to you concerning the relations to any association that might exist between the other locators?—A. Not anything further than he said that he was going to locate some others—some others were becoming interested with him in it, and that was the attractive feature to me, because unless adjacent claims were developed I would not hope to have a valuable coal claim.

Q. He said nothing about any definite agreement or plan or purpose existing between or formed by these other locators concerning the operations of the properties?—A. He did not.

Q. Then, from the conversations that you then had, or had previously had with Mr. Cunningham, you did not believe that your property was going to be associated with any other property as a mining proposition?—A. I didn't quite understand that.

Mr. GRAY. Read the question.

(Question read.)

A. I hoped that it would be associated some time, otherwise I would not expect to ever receive any remuneration for my outlay; but there was no agreement or obligation on my part at that time whatever.

Q. You did not then understand that it was ultimately proposed to unite the titles of all the claims in one ownership and form a corporation?—A. There was no understanding, and I was obligated in no way.

Q. Now, Mr. Moore, did you then have any reason to believe you would be expected to hold your claim, and share equally with the other locators in the production of any mines that might be opened on it?—A. No, sir; I did not.

Q. You knew the character of the region in which you were about to locate—was situated?—A. Yes, sir.

Q. Did you then believe it to be practicable for one man, or even any association of men, to profitably operate a mine on less than 160 acres of land up there?—A. No, sir; I did not.

Q. Did you have any purpose to undertake to operate any such a mine or mines by yourself?—A. I had no plans for that, but I hoped that I would be able to sell or consolidate it at some time, so that the property could be worked, if valuable, and, as I took it, the money I was expending for my proportion of the development work and prospecting that was going on and that was being done up there was to determine whether or not the field was valuable, and whether or not transportation could be had, and whether before final proof was made on the property and the money paid for it, whether there was anything there that was really attractive.

Q. How much money did you, in the aggregate, send to Mr. Cunningham?—A. To date?

Q. Well, up to the date you got your final certificate.

Mr. GRAY. That includes the purchase price?

Mr. PUGH. Yes.

A. Why, it must be close to \$4,000; \$3,000, I guess.

Q. Did Mr. Cunningham at various times provide you with information as to what he was doing with the money?—A. Yes; in a way.

Q. In what way?—A. Occasionally, at different times, he gave me a list of the expenditures and furnished me with the reports of a coal expert who examined the field.

Q. He sent you written statements of accounts, then, did he?—A. Yes, sir.

Q. I want you to look at this paper, which is in evidence as Government Exhibit 12, and state whether or not you ever received that paper or a copy of it [handing paper to witness].—A. Yes; I think I received that.

Q. Did you, at the time you received it, examine it?—A. I think so.

Q. And noted the statements made therein?—A. Yes, sir.

Q. I will ask you, without calling attention to the particular language, whether you noticed, in speaking of the properties up there, Mr. Cunningham used the possessive pronoun "our" always?—A. I noticed it several times.

Q. In speaking of the work that was being carried on he spoke of it as "our" work, "our" development work, et cetera?—A. Yes, sir.

Q. And in referring to the improvements, he spoke of it as "our" tunnel?—A. Yes, sir.

Q. "Our" surface work? In the accounts which accompanied that report did you notice he was keeping but one common fund and placing in that fund the money received from the entrymen?—A. Yes, sir.

Q. And making expenditures from that fund for the common benefit of all the claims?—A. Yes, sir.

Q. Now, in the same way, I will ask you to look at this paper, which has been put in evidence as Government Exhibit 6, and state whether or not you received that paper or a copy [handing witness paper]?—A. Yes, sir; I received that.

Q. Did you notice in that paper also, in speaking of the ground on which he was working, Mr. Cunningham used the same possessive pronoun "our"?—A. Yes, sir.

Q. Speaking of the operations there in progress as "our" development work?—A. Yes, sir.

Q. I call your attention particularly to this language, which I will read to you from the last paragraph of page 2 of that paper: "Mr. Hawkins finds four of our claims of but little value for coal, so far as can be determined at the present time, but, as they contain heavy timber, recommends their being held for that purpose; and as I have located four other claims, taking the dip of all the coal measures, no one will be any the loser thereby." Did you at the time notice that statement?—A. I noticed that statement, but it did not materially concern me, as Mr. Hawkins's report and map showed, and I saw therefrom, that there were coal exposures on my claims, and it did not materially affect me.

Q. Did you attempt to place any construction at all on his use of the statement, referring to four of the claims as "our claims?" Did you, in the statement sent to you?

Mr. HUGHES. Now, Mr. Commissioner, in order not to be mistaken and in order to make an explanation, I desire to state: Mr. Pugh has impressed me throughout as being disposed to be very fair, and I do not feel that he asks this question with any thought of misleading the witness; but I want to make an objection as to the preliminary statement in the question being misleading, but it quotes only a part of the statement, the balance of which, it seems to me, should be read to the witness; otherwise, it is confusing; in the question which he asks the witness he read from a portion of a long sentence.

Mr. PUGH. I read the whole paragraph to him.

Mr. HUGHES. In propounding your question you only quoted a part.

Q. Did you ever, or have you ever attempted to place any construction upon Mr. Cunningham's use of that expression, "four of our claims" in the statements he presented to you?

Mr. HUGHES. The point of my objection is, if that is connected with the last portion of the sentence in which he says that, no one will be injured.

Q. Well, so far as the purpose of my inquiry is concerned, that is the only language that has any relevancy to the question.

The COMMISSIONER. I understood you to make an objection to the question?

Mr. HUGHES. Yes.

The COMMISSIONER. I will overrule the objection, and you may take the answer.

Mr. HUGHES. I made that statement without attempting to impugn Mr. Pugh's motives.

A. My construction of Mr. Cunningham's language in that report was this, that Mr. Cunningham was the common agent for a number of entrymen, and using the word "our," the possessive pronoun, was—he meant by that that he was interested in an adjoining claim, and nothing further than that. I wish to change the wording of that. That he was interested in the development of adjoining claims.

Q. On the next page of the same paper I wish to invite your attention to the language, and I will read it to you here as follows:

You are already advised we are holding considerable tracts of land for timber which we will require in large quantities, but there is no law in Alaska for acquiring title to timber lands, consequently would consider it advisable to try and secure some cheap scrip and cover all we can before beginning any very extensive operations.

Did you also read and note that statement?—A. Yes; I read and noted that statement, but it was in opposition of my views, as I contemplated nothing so far in the future, and it meant years of waiting and an immense amount of money and I did not feel as if I were in position to put any more money into it—as much money as this would call for—and I did not entertain the idea, and would not have entertained the idea, and had it been put up in the transaction.

Q. Had you then had any other information than as indicated in that statement, that considerable tracts of timber land were being held for the use of all the claims, or any of them?—A. No; I did not know that any claims were being held.

Q. You had no information of that sort?—A. At some time—I do not know whether it was at that time or not—there was some surveys made, as I remember, but I did not know of the land being held.

Q. This statement was made on October 20, 1905. Had these surveys been made prior to that time?—A. I don't think so.

Q. You don't think so?—A. No.

Q. When were they made?—A. I could not tell you that.

Q. You can't remember that?—A. No.

Q. Did you solicit from Mr. Cunningham any more definite information about these statements which I have just read to you?—A. I

don't know as I solicited any more information. I wrote him at one time that I was in no position to take up any scrip on that land.

Q. And, then, we are to understand that you never authorized him to acquire any scrip for you, or locate any timber lands with any such scrip?—A. I never authorized him to locate or acquire in any timber lands.

Q. I wished merely to ascertain whether you subsequently received all the papers which I now hand you, or copies of them, being Government Exhibits 8 and 9, and I will ask you to look at them [handing paper to witness].—A. I think I did; yes.

Q. Did they disclose to you that Mr. Cunningham was still continuing to keep his accounts in the same form as a common account, placing all the moneys received from the entrymen in one fund?—A. Yes; I knew he was doing that.

Q. And making expenditures from that fund for the common or joint benefit of all the claim owners?—A. Yes; I looked at it in this way, that it would require a great deal of development work to prove the field, and that any development on the adjacent property enhanced the value of my property, and that the only way to make the property valuable was to obtain all the information possible, so as to have it available for then or any future time, any information which might at some time be wanted to handle the claim.

Q. Did you have any part in or knowledge concerning the proposed incorporation of a railroad company?—A. No, sir; I did not.

Q. Did you ever see the articles of incorporation of any such company?—A. No, sir; I did not.

Q. I mean, for the construction of a railroad from the location of these claims to the ocean?—A. I never saw any articles of incorporation. I have heard there was a company incorporated, but I had nothing to do with it, and know nothing about it further than I know that survey was made.

Q. You stated in response to a question asked you, in your direct examination, that you did not wish to pay the government purchase price for the land until you had learned that the property was valuable for coal. Did you ever receive any information that your claim by itself was a valuable coal claim; and if so, from whom?—A. I never received information that my claim was the most valuable, but I did receive information that there was coal on my claim.

Q. The information you received you thought justified you in making the investment?—A. I did; yes, sir.

Q. Now, coming to the matter of the affidavit which you executed, Mr. Moore, before Special Agent Glavis, you stated the conference with Glavis and Jones occurred at a table in the dining room of a hotel in Walla Walla?—A. Yes; part of the conversation, and it was carried into the lobby of the hotel, where the affidavit was written.

Q. Your affidavit was written in the lobby, was it?—A. Yes, sir.

Q. And you read over the affidavit of Mr. Jones, which preceded it on the same page, or in the same paper?—A. Yes; as I stated before, my impression is that Mr. Glavis read the affidavit to me first and then handed it to me. I know that he was in a hurry, because it was just about train time when the matter was taken up.

Q. Have you reexamined that affidavit this morning?—A. Why, yes; I have.

Q. In view of your reexamination, I will ask you whether Mr. Glavis misrepresented to you the contents of that paper?—A. He did not misrepresent the contents of the paper; no, sir.

Q. Did he make any misrepresentations whatever concerning it?—A. He made the misrepresentation that he told me that he expected that the patent would be issued very shortly and there was nothing at all which would interfere with that, and that the reference to a combination was made very incidentally to the transfer of the property to the Guggenheims.

Q. Now, you did not at that time, and you do not now find in the affidavit, any language that is difficult to understand, do you, Mr. Moore?—A. No, sir; I do not.

Q. Or words not of common use?—A. No, sir.

Q. And of plain signification?—A. It is plain when a person looks at it that way, but I was laboring under a misapprehension.

Q. Who wrote the affidavit?—A. Mr. Glavis.

Q. Were you present at the time he wrote it, or were you standing by him?—A. I would not state positively whether it was Mr. Glavis or Mr. Jones who wrote the affidavit, but one of them did; it was one of the two. I think it must have been Mr. Glavis, because he turned it over to Mr. Jones to swear me to it, as I remember.

Q. It may have been one or the other of them?—A. Yes, it may have been. I would not say positively it was Mr. Glavis, but that is my idea.

Q. Before passing further into the matter, and referring again to the language of the statement of October 20, 1905, that you examined a moment ago, in reference to the purchase of scrip you stated that you subsequently told Mr. Cunningham you did not wish to purchase any scrip or make any investment in scrip. Was that in answer to this report, or was it in answer to something that Mr. Cunningham subsequently said or wrote you?—A. Why, I can't say positively as to that. It was either in answer to that or something that was written subsequently.

Q. You don't remember whether he subsequently approached you in that behalf and solicited the investment?—A. No, sir; I do not. He did not say anything to me directly, nor did he write or give me any other communication than that he wrote me in the letter, but I rather think that is the letter I replied to.

Q. Did you communicate to Mr. Cunningham any acknowledgment of your receipt of that report, or of any other of these reports from him?—A. No, sir; I think not.

Q. Do you remember of having received any communication from Mr. Cunningham later than the report and statement of October 20, 1905, in relation to scrip purchased—proposed scrip purchased?

Mr. HUGHES. Do you mean written or verbal?

Mr. PUGH. Written or verbal—any report or communication.—A. I don't remember of any.

Mr. PUGH. I think that is all.

Redirect examination by Mr. GRAY:

Q. Mr. Moore, in connection with the question that Mr. Pugh asked you concerning the Bering River Railroad Company, did you ever have any interest in that company?—A. No, sir; I did not.

Q. You say you knew that a survey for a railroad line had been made?—A. Yes, sir.

Q. For what purpose did you understand that was made?—A. I understood that that survey was made as a recognizance survey, a survey to ascertain whether or not a railroad could be built from the coal district to tide water, and whether or not harbors could be had which could be developed within reason.

Q. How did you regard that information when it came to your attention?—A. I considered it valuable information. It was very essential to know what kind of transportation facilities could be had from the coal lands.

Q. Did you understand at that time, or at any time prior to your making final payment, that any such survey was being made for a railroad company that had been organized?—A. I think not. I don't know the date at which I learned that there had been a railroad company organized, but I think it was after the final proof.

Q. Mr. Moore, did you understand that the making of that survey in any way connected you with the construction of a railroad there, or did you give your assent to the plans for the construction of a railroad from this coal district to the ocean?—A. No, sir; did not give my assent, but I did not know that the road was contemplated to be built. As a matter of fact, I was in no position to build any railroad, or enter into any agreement to carry my proportion if I had to meet it with an equal number of other claims there, I could not have carried my end of it.

Q. Were you ever asked to do any such things as to join in the construction of a railroad or coal bunkers or wharves?—A. No, sir; I was not.

Q. Now, referring to this Exhibit 6 that Mr. Pugh has referred to, and in that connection to Government Exhibit 7, Mr. Hawkins's report, did you receive a copy of that Hawkins report?—A. Yes, sir.

Q. I call your attention to the following language in this Exhibit 6, and I think the matter is also referred to in Government Exhibit 7:

We have located a permanent tunnel site on Clear Creek, which will cut all the various veins described in Mr. Hawkins's report, from its face to its outlet; this tunnel will be 1,100 feet in length, when it reaches the first of these coal measures and continuing on it will be about 6,000 feet in length to the last seam. We are now building headquarters to transfer our camp from Trout Creek to this point, and as soon as the buildings are completed we will cut off the most of our expense until definite plans are perfected.

Did that matter come to your attention at the time you received that circular?—A. What was the date of that?

Q. October 20, 1905, or at the time you received the Hawkins report. Did it come to your attention?—A. Yes; that came to my attention.

Q. What consideration did you give it?—A. Oh, I did not give it sufficient consideration to go into it thoroughly, for the reason that I did not consider it was feasible. It did not benefit me in any material way.

Q. Why didn't it benefit you?—A. The first thing, the tunnel was too large an undertaking for me to enter into; and in the second place, it was too remotely located from my claim to be of any material benefit, and I did not consent or—

Q. How did you know it was remote from your claim?—A. From the fact that Mr. Hawkins had made a report and map showing the

location of the claims, and as in fact the tunnel he showed upon his map was the same tunnel that Mr. Cunningham referred to, I did not desire to go into any driving any tunnel, because it was, I considered it, not feasible, as far as my information was concerned.

Q. Did you ever have any talk with Mr. Cunningham about it subsequent to that time?—A. I don't think I did. I don't recall any.

Q. Did you ever understand that you, or did you ever authorize Mr. Cunningham to construct any such tunnel or engage in the construction of or commence the construction of it, Mr. Moore?—A. No, sir; I did not.

Q. And did you ever understand that you in any way were obligated to join in any such undertaking?—A. No, sir; I did not.

Q. Was he ever authorized to do or perform any such act for you in Alaska?—A. No, sir.

Q. Now, I desire to call attention to another thing in this circular that Mr. Pugh did not call attention to, and that is this statement, which is as follows: "We also ran levels and made an estimate on a magnificent water power, which can be made to furnish about 3,000 horsepower with the small outlay required to construct about 2½ miles of flume and a dam 200 feet wide and 10 feet high." Did you ever authorize Mr. Cunningham to engage in the development of any water power in this country?—A. No, sir; I did not.

Q. Were you ever interested in any water power in Alaska or the development of any such water power in Alaska?—A. No, sir.

Q. And did you understand that you were in any way obligated to join in?—A. No, sir.

Q. Did you ever talk with any other of the entrymen in that district concerning the proposed tunnel that Mr. Cunningham talked about or wrote about, or did you hear any of them express themselves concerning the same or express objections to the construction thereof, if you remember?—A. I rather think I did, with Mr. Jones; I don't think I talked with anyone else; and if I did talk with Mr. Jones, which I probably did, I must have expressed myself in that way, because that is the way I felt about it. I would not say positively I did.

Q. Now, you say this conversation that you had with Mr. Clarence Cunningham, in which he told you that the first arrangement that he had with you he was to have a one-eighth interest in the claim could not be carried out and that he was going to charge a salary, was held in the year 1903?—A. Yes, sir.

Q. At Wallace?—A. Yes, sir.

Q. While Mr. Cunningham was out on one of his trips from Alaska?—A. Yes, sir.

Q. Who else did you speak of besides Governor Moore—Governor Miles C. Moore—and the son or sons of his in Walla Walla, that Mr. Cunningham told you were interested or were going to have a claim in Alaska and authorized him to locate a claim in Alaska for them, if you know?—A. I do not remember that there was any others at that time, although Mr. Baker had become interested—I don't know whether it was prior or subsequent to that time.

And thereupon the further hearing of this inquiry was continued to 2 o'clock p. m. of December 11, 1909.

DECEMBER 11, 1909—2 P. M.

INQUIRY RESUMED.

Appearances: Hon. William J. McGee, United States special commissioner; Mr. James M. Sheridan and Mr. William B. Pugh, counsel for the Government; Mr. R. C. Hughes and Mr. John P. Gray, counsel for the claimants.

REGINALD K. NEILL, called as a witness on behalf of the claimants, after being duly sworn by the commissioner, testified as follows:

Direct examination by Mr. HUGHES:

Q. Give your full name.—A. Reginald K. Neill.

Q. What is your business?—A. Mining.

Q. How long have you been engaged in the mining business?—A. About twenty-five years.

Q. Well, Mr. Neill, state very briefly in what way you have been engaged in the mining business. The term is a general one.—A. The first ten years I was superintendent of mines, building concentrators in the Coeur d'Alene country; that was from 1886 to 1895.

Q. Since then in what capacity?—A. Since then I have been hunting over the country for new properties; prospects that are owned by prospectors; taking bonds and developing them into mines.

Q. Or the converse, showing they were mines, I suppose?—A. One or the other.

Q. Which I suppose is commonly true?—A. More times lose than win.

Q. Mr. Neill, your home is in Spokane?—A. Yes, sir.

Q. Are you acquainted with Mr. Cunningham?—A. I am.

Q. Clarence Cunningham?—A. I am.

Q. How long have you known him?—A. Oh, I think about fifteen years.

Q. Prior to 1903 where had you known him and in what business, to your knowledge, had he been engaged?—A. He was in the mining business.

Q. And where?—A. In the Coeur d'Alene country.

Q. When and where did you have any conversation with Mr. Cunningham in respect to locating a claim in what is now known as the "Behring River district," in Alaska—a coal claim?—A. In the spring of 1903.

Q. Where did you meet him?—A. On the corner of Riverside and Post, in the city of Spokane.

Q. What conversation took place between you and him at that time?—A. Well, I said, "Hello, Clarence. Where have you been this long time?" And he said, "I have been in Alaska." And he began to show me his coal samples, or his analyses of coal and oil.

Q. His analyses?—A. Yes.

Q. He didn't have the samples with him on the street?—A. No; he didn't have the samples.

Q. Well, go on and state what the conversation was, briefly.—A. He said, "I have been in Alaska looking for coal, and I have discovered large deposits and I have located a good many claims, and," he says, "I have located one for you." And I said, "Well, how did you come to do that?" "Well," he says, "you know I lost some money for you in the Coeur d'Alene country and I would like to see you

work out even or some profit beside." I thanked him for thinking about my loss with him, and so forth, and we talked there quite a little while, I don't know how long, on the street. Afterwards we went up in the office, Finch & Campbell's office, and I talked further with him about it. After getting all of the details in a satisfactory way it looked to me that it was worth while backing him up for a claim, and I agreed to take one claim.

Q. What was said, if anything, in regard to what would be the probable expense, including the purchase price, before you could get patent? Did he express any view or opinion at that time?—A. At that time he said it would probably take \$2,500 or \$3,000.

Q. Did he indicate how much he would call on you to put up in the first instance at that time?—A. Yes; he said he would draw on me for the amount.

Q. Do you remember what the amount was?—A. About \$750.

Q. Did he shortly afterwards draw on you before going back to Alaska for that amount?—A. Yes, sir.

Q. He drew, as a matter of fact, from Seattle, didn't he?—A. Yes, sir.

Q. And you paid the draft, did you?—A. Yes, sir.

Q. Now, Mr. Neill, when and where did you next see Mr. Cunningham?—A. It was about the last of August, 1903.

Q. And where?—A. I met him at Kayak Island.

Q. How did you come to meet him there?—A. Well, I had an opportunity to go to Juneau to examine some gold-mine property for Youngstown people; Youngstown, Ohio, and Mr. Finch & Campbell. I was their engineer at that time, and before leaving Spokane I said to Mr. Finch and Mr. Campbell that I would like to go on and see Mr. Cunningham's coal claims, and we talked over it some, and I said I would furnish the time if they would pay my expenses from Juneau on. So, after getting through with my work at Juneau, I made a trip to Katalla and I met Mr. Cunningham at Kayak Island.

Q. What did you do after meeting him in the way of examining any properties; I mean, what was the first thing?—A. Well, we stayed there that day, and the next day we went over to Katalla by steamboat, a little boat—I don't know what you would call it; a small steamboat, I would call it. We went over to Katalla, and we was over there early in the day, and in the afternoon we went out a short distance to see some seepage.

Q. The following day what did you do?—A. The next day we went to the coal claim.

Q. How long a time did you stay up at the coal claims?—A. Three days, if I remember right.

Q. Did you make some examination of the coal measures there and the formations?—A. Yes, sir.

Q. And spent three days looking over the ground there?—A. Yes, sir.

Q. I will ask you whether or not he pointed out your claim and Mr. Finch's and Mr. Campbell's?—A. Yes, sir.

Q. State more definitely what you saw there?—A. Well, we went to the grounds and in a systematic way looked over the veins of coal wherever they cropped out and where a great many openings that Mr. Cunningham had made, we examined that carefully. We looked

in a businesslike way—that is, to see whether it would be profitable to go on with the development or abandon the claims.

Q. Did you follow the openings so as to trace the strike—make any observations as to the dip of any of the exposures or veins that you saw there?—A. Well, the strikes were quite regular, running, I think, southwesterly and northeasterly, something like that, and dipped from 40 to 50 degrees, maybe 60 degrees. There was not enough opening to determine what the dip would be.

Q. With any certainty?—A. No.

Q. Mr. Neill, while there, in any conversation with Mr. Cunningham did you express any opinion to him as to your views respecting your own claim or your own interests in the matter?—A. Well, I talked the thing over on this plan, that the best plan would be to go along and develop the properties slowly, get as little money into each claim as possible, just enough to get the patents; that I believed it would be twenty or twenty-five years and perhaps fifty years before we would realize any returns.

Q. Why did you entertain that opinion?—A. Because it was so far from market and there was so many coal measures along the Pacific coast that we could not compete with them unless we got a very large tonnage.

Q. Now, after you left there what did Mr. Cunningham do?—A. Well, it took us a day to go back to Katalla, and then we put in two or three days more looking over the oil fields.

Q. Did he tell you anything about having oil claims—having located oil claims?—A. Yes.

Q. And having options on other claims—oil claims?—A. Mr. Cunningham owned oil claims of his own, and he had others under option.

Q. He wanted you to see them?—A. He wanted me to see them; yes.

Q. How long did you spend in looking over the oil field there?—A. Two or three days.

Q. Where was that, with reference to the water—the ocean; near the ocean?—A. Well, there is one oil seepage right in the ocean. Its seepage right there.

Q. Well, generally speaking, all down the coast, were they?—A. Well, pretty close to the coast. Some of them were back a couple of miles; 3 miles.

Q. Now, what conversation did you have with Mr. Cunningham respecting these oil properties and the development of them?

Mr. HUGHES. I will remark that the materiality of this may not be apparent now, but I am asking it now for the reason that it will be material later on.

A. Well, he said, "Now, I own quite a lot of oil land here that I have located myself, and I would like to organize a company and put down a drill hole at the best seepage I have got." He says, "I feel sure that I will have a gusher when I get this hole down." And after looking the property over I came to the same conclusion—that he was pretty sure in getting a gusher. I said, "How much money do you want and what kind of a deal are you going to give me?" He said, "I could get along with about \$20,000; not to exceed \$25,000," and he says, "I will be willing to give up four-fifths of my ground to get that much money to put down the first hole." Then I said,

"Mr. Cunningham, you know this is a very expensive place to operate. It will take perhaps a great deal more money than you think for. Why wouldn't it be better for us to make it \$35,000?" and he says, "All right, \$35,000 is better than \$25,000."

Q. It was your opinion that it would take that much?—A. Yes, sir.

Q. And if you went into it you wanted money enough?—A. Well, we talked that matter over. We said we would rather have \$10,000 left in the treasury than to be \$10,000 in the hole. So we came back to Spokane—or we came back to Katalla after looking the oil fields over—and we took a small boat and went back to Kayak Island. We were just one hour late. We missed the steamer, and I think we stayed there six or seven days waiting for another steamer at Kayak Island.

Q. Well, during that time did you have any further conversation about the oil proposition and the manner of developing it?—A. Well, while at Kayak Island we formed a plan. I was to raise \$35,000, if possible, and he was to turn over the land and retain one-fifth.

Q. Anything said about who would take charge of the work there?—A. Mr. Cunningham was to take charge himself.

Q. Did you make any plan with respect to whether or not he was to have any compensation for doing that?—A. Yes, sir; he was to have a salary.

Q. How much?—A. I am not sure, but I think it was \$200 a month.

Q. Now, during this time was there anything said about his plans, or his compensation, respecting the coal claims? If so, what?—A. He said "I am not drawing any salary on the coal claims and I rather think I ought to be taken care of for an eighth." I objected—

Q. An eighth of your claim and each of the others?—A. Yes.

Q. What did you say? What objection?—A. I said "You are wanting too much, Mr. Cunningham, I don't believe you can put that deal through. You will be getting \$200 out of the oil and \$200 out of the coal."

Q. Did you express a willingness that he should have a like salary for managing and looking after the coal?—A. Well, he said he would have to be carried, or some one would have to look after his coal, so I said a salary would be the proper thing for him to have. You know how trades are worked and talked over. No one ever comes to a trade just at one time.

Q. When he asked for an eighth interest what, if anything, did you say as far as your own personal interest in your own claim was concerned? Your own relations to these negotiations, that you had with him?—A. Well, I objected right there. I said I would not go on if I had to pay him a salary and carry him besides.

Q. Well, was there anything more said?—A. There was nothing more said. We dropped it right there.

Q. Now, after you came out from Alaska, did you go ahead and raise the \$35,000 for the formation of this oil company and carrying out of that oil project?—A. Yes, sir.

Q. The money was raised, was it?—A. Yes, sir.

Q. I will ask you whether, during that time that Mr. Cunningham was out there, you gave your attention to raising the money and secured it during that time?—A. Yes, sir.

Q. Before he went back was the machinery purchased for boring the well?—A. Yes, sir.

Q. So as to be sent up at the same time he went back?—A. Yes. Well, I think it had gone ahead a little; just a few days. Land there, both of them about the same time—the machinery and himself—because there is no docks there and he had to be there to take care of it.

Q. The machinery was installed and the money spent in boring?—A. Yes, sir; in boring.

Q. It is not material here, but did you get a gusher?—A. No; we did not. But it is there, I believe, yet. Someone will get it.

Q. Mr. Neill, when did you next see Mr. Cunningham, if you recall—perhaps I can refresh your recollection?—A. I think the last time I met him was when he got married. That is the last time I met him.

Q. That was in the fall of 1904?—A. Yes; somewhere along there.

Q. A year after this time you have mentioned?—A. I don't know just what year it was, but I met him at that time.

Q. Now, where did you meet him?—A. At my house.

Q. He called with his newly wedded wife?—A. Yes, sir.

Q. Did you have some conversation with him there?—A. Oh, a little; not very much.

Q. State as nearly as you can recall the substance of the conversation you had at your house.—A. I asked him how the claims were developing and a few questions like that. I couldn't go into any great details. He had his wife with him.

Q. You talked to him about the oil I suppose?—A. The oil and so forth.

Q. Now, about that time did you receive from Mr. Cunningham a power of attorney for making a new location for you of a coal claim?—A. Yes, sir.

Q. I show you this paper, Mr. Neill, from the government files in coal entry No. 24 and ask you if this is your signature to this power of attorney?

(Witness examines paper.)

A. Yes, sir; that is my signature.

Q. The power of attorney being dated October 24, 1904, and acknowledged before W. A. Carey, in Spokane, Wash.?

(Examines paper.)

A. Yes, sir.

Q. I also show you a paper attached to the foregoing purporting to be an affidavit made by you at the same time before the same notary public and ask you if that is your signature?

(Witness examines paper.)

A. Yes, sir.

Q. Mr. Neill, in the affidavit which I just showed you you make the following statement:

I further swear that I am now in the actual possession of said coal lands through my agent and attorney in fact and make entry for my own use and benefit and not directly or indirectly for the use or benefit of any other party.

Was that statement true?—A. Yes, sir.

Q. Have you had any conversation with Mr. Cunningham on this subject prior to receiving this power of attorney, after the conversation that you have already detailed at Kayak, in Alaska?—A. I had no further conversation with Mr. Cunningham.

Q. Had you at any time prior to signing this affidavit ever consented or agreed to give to Mr. Cunningham or anyone else any interest in your coal claim?—A. No, sir.

Q. Had you any understanding or agreement with him that your claim should be turned over to a corporation or association of persons, and that anyone should have any interest, directly or indirectly, in the claim?—A. No, sir.

Q. Other than yourself?—A. No.

Q. Did you have any understanding or agreement with him or anybody else that this claim, if owned by you, would be held for the purpose of joint operation with any other entrymen?—A. I did not agree to hold it.

Q. Did you have any understanding that that would be done?—A. No, sir.

Q. Mr. Neill, going back just a little bit, I will ask you if, when you came back from your trip a year prior to making this power of attorney, you reported to Mr. Finch and Mr. Campbell the result of your observations up there as to the character of this property and their claims and yours in the district?—A. I gave them a personal interview of the thing and told them all about it as far as I could go.

Q. Did you talk with any other people who had authorized Cunningham to make locations, any other acquaintances of yours?—A. Well, a good many of the claim owners came to me and asked me what I thought of the property, and I expressed my idea of it.

Q. Will you state what you said to any or all of these claim owners or views you expressed to Mr. Finch and Mr. Campbell?—A. I advised Mr. Finch and Mr. Campbell that the coal was something that was a long way off, a great number of years before they would find any use for the coal; but I believed that the oil had a great future, and it was close to the sea and it could be piped out and loaded on boats. The only thing they would have to look after was finding a market for the oil. There was so much large seepage there that if they once struck the fountainhead of this oil that they would not be able to find a market for the oil; there was so much of it.

Q. You were confident there was a large deposit of oil there?—A. Yes; and I still have confidence that there are large deposits of oil there.

Q. Now, Mr. Neill, did you, subsequent to the giving of your power of attorney, receive a circular report sent out by Mr. Cunningham under date of February 29, 1904? I show you in connection with this question Government Exhibit No. 5, and ask you to examine it, and having done so, to state what is your best recollection as to whether you received that or not.

(Witness examines paper.)

A. Yes, sir; I received that.

Q. I think my question might have been misleading when I come to think. That was before the giving of your power of attorney, February 29, 1904. Now, there are references here to these properties coupled with the use of the plural pronouns, or the possessive pronouns, "we" and "our," speaking in relation to these matters. Did that attract your attention in any way to the light of your previous conversation with Mr. Cunningham?—A. None whatever.

Q. Why not?—A. Because that is the western way; when you are looking after a man's property, you say "we" and "our" property.

If I have a man now developing a claim for me, he says "our claim." He don't say "your claim," but he says "our claim" always, even if he don't own a dollar in it, only his day's pay.

Q. Subsequent to the making of the new location under your power of attorney did you receive a copy of the report made by a man by the name of Hawkins?—A. Yes, sir.

Q. Did you know anything about his having been sent up there prior to getting this report?—A. No, sir.

Q. How did you account for it, Mr. Neill?—A. Well, I couldn't account for it at all.

Q. Well, what I mean to inquire about without leading you was as to your absence, and as to whether you were away from here a considerable part of the time? This was in the year of 1905.—A. Well, my business called me mostly out of the city all of the time. I will be in three or four days, and then I will be out again three or four weeks, sometimes a month, and sometimes two months.

Q. I show you now Government Exhibit No. 6, and ask you to examine it, and in order to save time as much as possible, I inform you at this time that this is the same paper, a copy of which I asked you to look over before going on the witness stand, so that you would not have to take the time. Now, I ask you to state whether you received a copy of that.

(Witness examines paper.)

A. Yes, sir. That is the first indications when I received that; the first that I knew anything about it.

Q. The first that you knew anything about that Hawkins investigation?—A. Yes, sir.

Q. Mr. Neill, in this report Mr. Cunningham uses the following language, referring to the making of maps by Mr. Hawkins, to wit: "In addition to the above, his map will show contours and levels from our lands to the ocean, together with charts and soundings of the channels where we are likely to build coal bunkers and wharves, besides giving approximate route and length of proposed railroad to both the lands owned by the English company and ourselves." I will ask you to state the consideration you gave to this statement when you received it.—A. Well, I opposed it very much when I heard about it.

Q. Did you see Mr. Cunningham shortly after this?—A. No; I don't think so; I don't think I saw him for some time afterwards.

Q. When you did see him did you have talks with him in regard to the expenses up there?—A. Well, I forget about that, because at that time Mr. Cunningham thought I was opposing him a great deal on a great many things that I had no right to.

Q. Well, that is what I am asking. What position did you express to Mr. Cunningham with respect to any projects?—A. The only opposition I took I refused to pay the drafts and talked to the other claim owners; those that came to see me.

Q. And expressed your objections to them?—A. Yes.

Q. Could Mr. Cunningham incur any expenses beyond what was necessary to properly prospect the claims and carry them to patent?—A. That was my idea exactly.

Q. Did you express that opinion to Mr. Cunningham in any conversation with him?—A. Well, I expressed it at several times, but I don't know at what date.

Q. Now, I call your attention to this further language in Government Exhibit 6: "We also run levels and made estimates of a magnificent water power that can be made to furnish about 3,000 horsepower with a very small outlay, requiring about two and one-quarter miles of flume, with a dam 200 feet long by 10 feet high." Did you give consideration to this matter as a matter of proposed expenditure to which you should contribute?—A. Well, I said I didn't want to contribute to anything but my claim.

Q. I call your attention also to the following language:

Mr. Hawkins finds four of our claims of but little value for coal as far as can be determined at present, but as they contain heavy timber recommends their being held for that purpose, and as I have located four other claims taking the dip of the coal measures no one will be any the loser thereby.

What considerations, if any, did you give that, if you recall? What impression did it leave upon your mind?—A. At that time I felt that Mr. Cunningham was making that so that the other parties could be relocated; that is the way I looked at it at that time.

Q. He also uses in that report the following language:

You are already advised we are holding considerable tracts of land for timber, which will be required in large quantities, but there is no law in Alaska for acquiring timber land, consequently would consider it advisable to secure some cheap scrip and cover all we can before beginning very extensive operations.

What, if any, consideration did you—A. I refused to have anything to do with the timber.

Q. Did you have a talk with him afterwards about buying scrip or taking timber lands?—A. Well, I am not sure whether I talked to him or not, but I refused to the other claim owners, saying I would not have anything to do with the timbers.

Q. When you met any other person who was an entryman you made those statements, did you?—A. Yes, sir.

Q. Were you ever asked or called upon by Mr. Cunningham, directly or indirectly, to consider the proposal to carry out any such a scheme as any one of these matters I have called your attention to in this report?—A. I don't exactly understand you.

Q. Read the question.

(Question read.)

A. No, sir.

Q. I call your attention to this language in this report:

We have located a permanent tunnel site on Clear Creek which will cut all the various veins described in Mr. Hawkins's report and affording the best possible outlet. This tunnel will be 1,100 feet in length when it reaches the first of these coal veins, and, continuing on, it will be about 6,000 feet to the last seam, etc.

What have you got to say as to what is said here?—A. I objected to it.

Q. What objection did you make; to whom?—A. Because I didn't want to put the money in it.

Q. To whom did you make any such a statement as that?—A. To some of the claim owners.

Q. That is, in commenting upon this report you expressed to them your disapproval?—A. I did.

Q. Do you remember whether this matter was ever brought to your attention by Mr. Cunningham—of this tunnel?—A. I don't think so. I don't think he talked to me about it at all.

Q. Now, what did you understand from such statements as these contained in this report coming from Mr. Cunningham?—**A.** In what way?

Mr. SHERIDAN. Just a minute. I object to that question. It seems he did have understanding from the question just before that. I want it first to be developed whether he did pay such attention to this matter that he formed an understanding of that kind. I don't desire to be interrupting the witness frequently, but I do want to call attention to the leading character of the testimony produced from the counsel for claimants.

The COMMISSIONER. Read the question.

(Question and answer read.)

Mr. HUGHES. I mean what importance did you attach to this letter and these various comments about these subjects to which I have called your attention, coming from Mr. Cunningham as they were?

The COMMISSIONER. Wait a minute. An objection has been made to the question. These papers, or copies of them, were received by the witness, weren't they?

Mr. HUGHES. Yes; he has testified he has received those.

The COMMISSIONER. And you call upon him for what observations or impressions he formed from those papers?

Mr. HUGHES. Yes.

The COMMISSIONER. I think that is a proper question.

Mr. SHERIDAN. I think it states on the assumption that he did form such an impression without anything being said by the witness to show he did; it is assuming that an answer has been made acknowledging that he did pay attention, and it is a comment on the witness's examination what he says by counsel for claimant.

The COMMISSIONER. Well, now, Mr. Sheridan; he has stated his conversation with Mr. Cunningham and he is leading him down to the present time when he is receiving these statements from Mr. Cunningham; and he has said he did not agree with all Cunningham has said, as I understood the witness, in certain matters. Now, he has been asked what his impressions were and what opinion he formed from those statements contained in certain of these letters that were received by him. I think that is a fair question; it strikes me so.

Mr. SHERIDAN. Very well. My objection remains, however.

The COMMISSIONER. You may answer the question.

Mr. HUGHES. I will make this statement, not only for the benefit of the commissioner, but for the benefit of the examining tribunal, that the purpose of this question is to have the witness state what he understood and what impressions were made on his mind in respect to this in order that they may determine by what he did or what he said or by his action to what extent, if at all, the ideas of Mr. Cunningham reflected the ideas of the witness and would be binding upon him.

The COMMISSIONER. That is the way I understood it.

Mr. SHERIDAN. We are perfectly willing that these questions should be brought out for that purpose, but we do not want any part of the witness's assumptions which he has been giving to questions propounded by counsel for claimants, that the witness did have such an understanding until it is shown that he had.

The COMMISSIONER. No; he did not ask him if—he did not ask him; the question did not state that he had an impression, but asked him what his impression was from that.

Mr. HUGHES. And I submit—

Mr. SHERIDAN. My objection goes.

Mr. HUGHES. I just want to make this one further remark, and that is in an examination like this counsel should limit himself to an objection. If I ask a question that in his opinion is an improper one and he makes his objection, then I must determine whether that objection will be sustained of itself or whether I will pass the question or not. We need not have any discussion upon it, and if my questions are improper Mr. Sheridan has an opportunity to have them excluded upon making his objection properly, and I will take the consequences. I think I know something about what is competent evidence and what is proper examination, and the ideas of Mr. Sheridan may not agree with them, but if he is right and I am wrong, I will take the consequences before the examining tribunal. Now, you may proceed.

(Question read.)

A. About driving tunnels?

Q. No; about these matters I have called attention to in this report.—A. Well, I formed a good many conclusions. I thought a great many projects that he had outlined would never be carried through. In the first place it would take too much money, and a good many claim owners could not afford to put up the money. In fact, they were all straining a point, or a great many of them were straining a point, to pay their drafts they were called upon to pay. I was several times myself, and I did not think it would ever amount to anything. In fact, every time we got a statement from him a draft would come along the next day or the third day afterwards for \$100 or \$200.

Q. Well, now, Mr. Neill, had you given Mr. Cunningham any authority to attempt to carry out any project or any idea that he might form up there while he was there or that he expressed in these statements or in any like statements, or given him any or other authority than that set out in the power of attorney you had executed?—A. I gave him no authority except to look after my claim.

Q. And in your conversation with him did you express to him any caution or restraint as to the matter of expenditure?—A. Several times.

Q. Now, following that just one step further. Did you consider that Mr. Cunningham contemplated making any expenditures for the purpose of building tunnels, or railroads, or wharves, or water-power equipment, or any thing of that kind without having express authorization?—A. No, sir.

Q. Were you ever called upon to meet with Mr. Cunningham or with any other person for the purpose of determining whether such expenditure should be authorized?—A. No, sir.

Q. Now, you have spoken about drafts made on you which you did not pay. Why didn't you pay them when he drew them?—A. Well, when I went into the taking of a claim with Mr. Cunningham I agreed to go to the amount of \$3,000 in order to develop it and to get a patent, and these drafts were coming too regularly. I could see I was going to get a great deal more money in than I agreed upon, and I refused to pay the draft, and returned it.

Q. Well, did you ever pay them afterwards; and if so, why?—A. Why, I paid them because I thought it was more honorable to pay them than not to pay them.

Q. Did you have any other reason? And if so, state it.—A. No; I did not have any other particular reason, except my honor about paying them. I have always felt they were getting too much money in the claims.

Q. Let me ask you if you received any communication from Mr. Cunningham relative to your failure to pay any demands or drafts, or anything of that kind, and what it was?—A. It was along about the time of entering the claim, and Mr. Cunningham notified me if I did not pay up he would let my claim lapse.

Q. You mean by entering, along about the time to pay for them?—A. Yes; being the time of paying for the claim.

Q. And then you thought it best to pay?—A. It was cheaper for me to pay up than to hire another man to go and look after it.

Q. I show you now, from the same government files of coal entry No. 24, your application for patent, and ask you if that is your signature?—A. Yes, sir.

Q. Purports to have been sworn to before W. A. Corey, on the 20th day of February, 1906.—A. Yes, sir.

Q. Did you swear to it at that time?—A. Yes, sir.

Q. I call your attention to the following statement contained in this application: "I make the entry for my own use and benefit, and not directly or indirectly for the use or benefit of any other party." Now, that you are upon the witness stand, where you may be subject to cross-examination by counsel for the Government, and in order to be brief, I ask you as to whether that statement was true?—A. It is; yes.

Q. Was it, I mean, at the time?—A. It is true; yes.

Mr. SHERIDAN. I submit he has not answered it yet.

Q. You say it is true. I want to know whether it was true at the time it was made? Counsel has a right to be technical in regard to a statement of that kind.—A. Yes; it was.

Q. Now, it appears from the testimony of the other entrymen in this case that a special agent of the Government by the name of H. K. Love sent to various entrymen an affidavit to be executed and forwarded to him prior to the issuance of your final receipt. Do you recall whether you received such an affidavit from Mr. Love?—A. Yes, sir.

Q. I will ask that question because the files do not contain the affidavit, and counsel for Government admit the correspondence contains a comment indicating that such an affidavit had been sent. I will ask you what is your recollection in regard to it?—A. I think I signed it and swore to it. I am not sure about it. I am not positive.

Q. Counsel will not object to my making a statement to the witness, in fairness to him, that the private files of the Government disclose that such an affidavit was made, and was delayed on account of his absence from the city, so that it eventually reached Mr. Love after your final certificate. Now then, I will hand an affidavit to the witness, which is the form of affidavit which appears to have been sent to the various entrymen by Mr. Love, but which was in this particular instance signed by Mr. Fred Cushing Moore. Without paying any attention to the name Moore, I want you to run over this

affidavit and read it over, and having done so, tell me whether you recall having received that, or whether it is your recollection you signed such an affidavit [handing paper to witness]. What is your best recollection?—A. I think that I signed that. I am not sure about it.

Q. Mr. Neill, I am going to read from this affidavit the following language, which I wish you would closely follow and attend to, to wit:

That said location was made for the sole use and benefit of affiant, and has ever since so remained his and in his exclusive control; that at no time prior to location, or at such time or since, has affiant entered into any agreement, express or implied, or pledged himself by promise or otherwise, express or implied, by which the title to said land or any part thereof or any interest therein is to pass to any other person or association whatsoever; that in event said claim goes to entry in the United States land office at Juneau, Alaska, and the receiver's receipt for the purchase price issues, he will not be under any contract or obligation or promise to sell or convey said land to any person or persons or association, or to put same into any company or joint holding for any purpose, or otherwise dispose of same, but will be free in every way to hold said tract to lease or sell it at any future time.

Now, I will ask you whether up to the time when you made your final payment for your coal location and received your final receipt the statements which I have just read are true, in all respects, and if not, state what the fact is in regard to it.—A. At the time I received the land office receipt from them no one had any interest in my claim, and no one afterwards until the time I sold it.

Q. Now, lest counsel or anyone else might not consider that a complete answer, I shall be compelled to ask such questions to be able to find out exactly your meaning. Mr. Neill, at the time you made your final payment, and at the time you received your final receipt, and at all times prior thereto, what is the fact as to whether or not you had any understanding or agreement with Mr. Cunningham or any other entryman or any other person that you would turn over your claim to any company or association organized or thereafter to be organized?—A. I had no such understanding with anyone.

Q. What is the fact as to whether at that time or at any time prior to the issuance of your final receipt and the receiving of your final receipt you had any agreement or were under any promise or had any understanding, directly or indirectly, to hold your claim for the purpose of joint operation or carrying on of joint mining operations in conjunction with any other coal claim?—A. No, sir; I had not.

Q. What is the fact as to whether Mr. Cunningham or any of the other entrymen or any other person was to have any other interest, directly or indirectly, or any benefit to follow, directly or indirectly, from this coal-mining claim of yours?—A. There was none.

Q. You sent the Government the purchase price, did you?—A. Yes, sir.

Q. To whom?—A. I sent a draft through the Exchange National Bank to Seattle.

Q. To the receiver at Juneau?—A. Yes; to be forwarded to the receiver at Juneau.

Q. I will ask you now whether you received a duplicate of final receipt in coal entry No. 24, which is found among the papers in this case? I now show them to you.—A. Yes; that is it.

Q. And I show you also the certificate of entry signed by the register.—A. Yes, sir.

Q. Did you receive a duplicate of that?—A. I think I did.

Q. Mr. Neill, were you present at a meeting of some of the entry-men in this proceeding, held at the office of Finch & Campbell, in the city of Spokane, on the 15th day of May, 1907?—A. Yes, sir.

Q. I show you Claimant's Exhibit 8, which purports to be a copy of the record made of that meeting, and ask you if you were present at that meeting, and that the R. K. Neill, mentioned as a member of the committee which was appointed at that meeting, was yourself?—A. Yes. I came in on the last end of the meeting, which was just closing.

Q. Did you go with other members of that committee to see Mr. Wakefield?—A. Yes, sir.

Q. After the meeting had adjourned?—A. Yes, sir.

Q. State briefly what occurred at your meeting with Mr. Wakefield.—A. We counseled with Mr. Wakefield, and after a short consideration he said there was so many coal-claim owners that it was hardly likely that they would all come into a corporation, and he said the only thing to do was to try and get the deeds first, and then he worked out a form which he said he would send to each claim owner, and so forth, to see if they would sign and send them back to him.

Q. Did you receive one of those blank deeds to be executed?—A. Yes, sir.

Q. Did you execute and send it back to Mr. Wakefield?—A. Yes, sir.

Q. Were you present at the meeting held in the office of Messrs. Finch & Campbell on the 16th of July, 1907?—A. No, sir.

Q. Do you know where you were during that time? After the May meeting?—A. I was down on the Colorado River near the Needles, Cal., or Parker, Ariz.; I don't know which; the Needles, or Parker, Ariz.

Q. You were gone for several months, or at least several weeks?—A. I think I was gone for about two months at that time.

Q. Now when did you learn that any such meeting had been held, and that a committee consisting of Mr. Cunningham and Mr. Campbell and Governor Moore had been appointed as a committee to go to Salt Lake; when did you learn it, if at all?—A. I learned it when I returned to the city.

Q. Do you remember how you learned it or from whom?—A. Through Mr. Burbidge.

Q. What occurred between you and Mr. Burbidge at the time you learned it? Just state briefly.—A. We talked over the plan, and we did not like it very well.

Q. At this point, and in order to shorten your answer and to save my asking you many questions, I show you Government Exhibit 10, and ask you if that is the plan you spoke of a moment ago that you and Mr. Burbidge discussed—whether you had a copy of that proposition before you when you discussed with Mr. Burbidge?—A. Yes; I had already received it.

Q. Now, what was the discussion you had with Mr. Burbidge, briefly?—A. Well, to make it short, we thought we were getting the worst of it. The deal was all in the other fellow's favor and not a

good deal for us, and so Mr. Burbidge advised me to take my deed out.

Q. Did you?—A. I did.

Q. What did you do?—A. I did so.

Q. You went to Mr. Wakefield and took back your deed?—A. Yes, sir.

Q. Now, then, Mr. Neill, do you still own this claim?—A. No, sir.

Q. What did you do with it?—A. I sold it.

Q. When?—A. About a year or a little over a year ago.

Q. You gave an option on it to Mr. Johnson?—A. Mr. Frank Johnson.

Q. And he subsequently took it up?—A. Yes, sir.

Q. How much did he pay?—A. Fifteen thousand dollars.

Q. Did you ever pay any part of that to Mr. Cunningham?—A. No, sir.

Q. Did he ever ask or demand any part of or interest in it?—A. No, sir.

Mr. HUGHES. Take the witness.

Cross-examination by Mr. SHERIDAN:

Q. How old are you, Mr. Neill?—A. Forty-six.

Q. Now, I believe you said your business had been that of mining and mine brokerage, as I understand you?—A. No, sir.

Mr. HUGHES. I don't think he said that.

Mr. SHERIDAN. Well, that is what it amounts to, I suppose, dealing in mines and development.—A. Mining and mill construction—which is different.

Q. Now, where did you have your mine experience, just briefly?—A. Oh, I developed my mine experience in the Coeur d'Alene country. I went in there, one of the first.

Q. Were you ever associated in any way with any of the large mining properties in the Coeur d'Alene district?—A. Yes, sir.

Q. Name a few of them.—A. The Standard Mining Company, the Hecla Mining Company, the Milwaukee Mining Company.

Q. In what capacity?—A. As superintendent and mine manager.

Q. For about 10 years?—A. Not steadily at that. The first, from 1886 to 1889, I did nothing but building lead concentrators, and then after that I began mining, opening up mines for Finch & Campbell.

Q. Now, are you associated at the present time with any of those mines?—A. No, sir.

Q. Are you associated in any way at the present time with Finch & Campbell financially?—A. No; I was at one time, but I have sold my interest to people with them.

Q. How long ago did you sever your connection with them?—A. About two years ago.

Q. And you are at the present time engaged in what business, Mr. Neill?—A. In mining and other business, such as a man can invest his money in.

Q. What mines, briefly, are you interested in at the present time?—

A. I am not operating any mines just now. I am plumb out.

Q. Did you ever have any experience in the oil business?—A. No, sir.

Mr. HUGHES. You mean prior to the venture he has described?

Mr. SHERIDAN. I mean at any time.

Mr. HUGHES. I think he has probably indicated he has had some experience in that [laughing].

Mr. SHERIDAN. I mean at any time; any business experience in connection with the handling of oil properties.

A. No, sir.

Q. Are you a civil or a mining engineer, Mr. Neill?—A. Well, I am originally a mechanical engineer, and what mining experience I have got has been from practical experience.

Q. Now, was it in 1903 that you first went up to Alaska?—A. Yes, sir.

Q. Or that you went to Alaska?—A. Yes, sir.

Q. About what part of the year was it you went, please?—A. Oh. I started off in July, and I stopped off at Juneau to examine some gold property there, and reach—well, I stopped there, I suppose.

Q. Did you have any conversation with Clarence Cunningham before you went up to Alaska, in 1903?—A. Yes, sir.

Q. Now, just give us briefly in our own words, what conversation you had with Clarence Cunningham, that induced you to go to Alaska.—A. Well, he told me that he had been to Alaska, and had got into a good coal country, and that—he told me the size of the vein and the chances there was there to develop some good claims, and he said, "Now, I have located a claim for you. You don't have to go into it unless you want to, but I have done this because I lost money for you in the Coeur d'Alene country, in the lead-mining district, and I would like to see you get even and get that money back;" and then it led up to how much it was going to cost.

Q. Now, before you went to Alaska, did you make any payment to Clarence Cunningham?—A. Yes, sir.

Q. That was the \$750 payment?—A. Yes, sir.

Q. Now, what instructions did you give Clarence Cunningham concerning the expenditure of that \$750, or if there were no instructions, what understanding did you have with him concerning the method of using that money?—A. Well, in this western country, men when they go into a mining proposition, they usually say, "Good-bye" to the money, and I made this venture with Cunningham on the expectation of going up during the summer to examine the property, and if it was not, or after my looking it over it didn't suit me, I would lose my money, and quit.

Q. Now, you had some unfortunate experience in mining with Clarence Cunningham before that time?—A. Yes, sir.

Q. And on which he lost money for you?—A. Yes, sir.

Q. How much did he lose for you?—A. Oh, several thousand dollars—

Mr. HUGHES. Just a minute. Oh, that is immaterial.—A. I don't know how much money; several thousand dollars.

Q. Did you give him this \$750 without any further understanding than to use it as he thought best in connection with continuing that work?—A. As he thought best; yes.

Q. Did anybody else accompanying you to Alaska on that trip?—

A. Yes, sir.

Q. Who?—A. Mr. Horace Davenport.

Q. Was he one of the original locators with Mr. Cunningham?—

A. Yes, sir.

Q. No others along?—A. Yes; there were several; but I have forgotten the parties. They were disinterested parties. They were not connected with the coal claims with Cunningham.

Q. Were not any of the present entrymen?—A. I do not think so.

Q. Now, when you arrived at Juneau, did you meet any other entrymen there for the purpose of conversing with them or forming any plans with them concerning these coal claims?—A. No, sir.

Q. Were any of the other entrymen there that you knew of or whom you met at that time?—A. Well, there was another man at Kayak Island that was talking about taking a claim, but I don't think he ever took a claim.

Q. What was his name?—A. I have forgotten his name. He was—he used to be a carpenter and worked for me several years ago, but I have forgotten his name.

Q. Now, did you have any conversation on this occasion of this visit to Alaska while you were in Alaska with any other person than Mr. Davenport and Mr. Clarence Cunningham concerning these claims?—A. Not that I know of. I may have talked with someone coming down on the boat, you know, about the claim, which anyone is liable to do in the course of a conversation.

Q. Of course. Now, Mr. Neill, we will leave aside the oil feature which you have discussed, and I want you now to tell us briefly what was the substance of any conversations you had with Clarence Cunningham or Mr. Davenport concerning your coal claim or any adjoining coal claims while you were in Alaska at this time?—A. In what way?

Mr. SHERIDAN. Read the question.

Mr. HUGHES. He can't testify to any conversation with Mr. Davenport on this subject, but really your question contains two questions, one as to the conversation with Mr. Cunningham and one as to the conversation with Mr. Davenport; and as far as Mr. Davenport is concerned, that is immaterial. As to those with Cunningham, I have no objection. I think it is proper.

Mr. SHERIDAN. I will now pay the compliment to the witness that Mr. Hughes paid mine for me, as I think he is a very intelligent man. He can answer that question.

A. Well, the point was I owned the claim myself and I wanted to get through with the least outlay of money possible, and I talked with Clarence a great deal on that subject. When we started out from Katalla, going up the river—I forget the name of the river; at that time I did not know whether it had any name or not—I think they called it Chilcat or some other kind of a cat. It was a cold cat with me. It rained on us all the way and lots of times I felt like turning around and coming back, and I said to Clarence Cunningham two or three times, "You are fooling away your time here in this country;" I said, "let's go back; there is nothing in it." Well, after he talked to me a while I would get my courage up again and we would go on, but when I got to the camp that night why I was glad I made the trip. The next day, why, we put in hard work looking the country over. Mr. Davenport played out. He was a man who worked in a bank and he could not go, and the first day we had to drag him in, and we got to camp and set him down to eat something, and he fell asleep eating and didn't wake up for eighteen or twenty-four hours afterwards. [Laughing.]

Mr. SHERIDAN. This is not for the record [Mr. Sheridan's remark omitted].

A. (Continuing.) So Mr. Cunningham and I done the rounds the next two days looking over the various claims. We went to see the coal; we wanted to see whether the quantity of coal that was in that country, whether it was justifiable in going ahead or not; and as I expressed myself many times to him, I thought it might be a good thing for our children, but we would not live long enough to get anything out of it.

Q. Now, Mr. Neill—

Mr. HUGHES (interrupting). Now, wait. I thought you interrupted him in his answer. Were you through?

The WITNESS. Yes; I am through.

Mr. SHERIDAN. Yes.

Q. Now, did you have on this occasion any discussion with Clarence Cunningham considering the possibility of transportation, with a view of getting the coal out of these claims at any time?—A. No, sir; none at that time; it was too far off.

Q. Did you have any discussion with him concerning any water powers or any harbor improvements in connection with these claims?—A. He talked about a water power, but I tried to discourage him on that. I told him it was useless to take up water power, as the Government says, "You must make use of it, or you can't own it." And I supposed the same laws was in Alaska. The reason that I know about it is that I have taken up quite a lot of water power.

Q. Now, you remained there for some time in Alaska, and then you came back here to Washington again?—A. Yes, sir.

Q. Then, as you have given it to us, the substance of the conversation you had with Clarence Cunningham and Mr. Davenport, during your visit in Alaska, as I understand it—A. Well, we returned to Kayak Island from Katalla, and we missed our boat about one hour, and I think we stayed there about seven days, and I am sure we stayed there six days, stayed there waiting for another boat to come along, and in the meantime we had plenty of chance to discuss the affairs of the coal and the oil; and both Clarence and myself—or Mr. Cunningham and myself—came to the conclusion that the oil was the thing to take hold of to get revenue back, or a dividend proposition. We were both looking for dividends at that time; and as I say, that was the conclusion we came to, to raise \$35,000 to put in the oil.

Q. Now, when was that \$35,000 raised and how?—A. It was raised by 5 or 6 of us.

Q. (Interrupting.) Of the entrymen?—A. No; nearly all of the entrymen—there was Mr. Finch and Mr. Campbell and Mr. Sweeney and Mr. Wick and Mr. Warner and Mr. Miller; Mr. Wick and Mr. Warner and Mr. Miller were all Youngstown, Ohio, people, or lived around there somewhere.

Q. Those were the only persons who contributed to that \$35,000?—A. Almost. I paid in one-tenth of the money, \$3,500.

Q. I see; and that subscription was to develop the oil properties, as I understand?—A. Yes; the money was turned over to Mr. Cunningham.

Q. Was that sum of money expended by Mr. Cunningham exclusively on the oil ventures in Alaska?—A. I rather think so.

Q. Did he ever render any independent account regarding the oil exploitations?—A. Yes, sir.

Q. Did you receive those accounts?—A. Yes, sir.

Q. Are they the same accounts or different from these which have been presented to you by counsel?—A. They are different accounts.

Q. Now, there was some expense attached to this trip. Who paid that?—A. My expenses?

Q. Yes; yours and Mr. Davenport's, if you know.—A. Well, Mr. Davenport paid his own expenses. He was taking an outing at that time from the bank where he was working, and, as I said before, Finch & Campbell paid my expenses from Juneau to the coal fields, and I put in my own time.

Q. Was it originally your own idea to go to Alaska on this trip, or did Finch & Campbell suggest it?—A. It was my own idea, because I owned a claim and I wanted to see what was on that claim.

Q. Were Finch & Campbell interested in claims there at that time, too?—A. Yes; we all three became interested the same time, or the same date about, I guess, because I encouraged them to go into it as much as I could.

Q. Now, give us in your own words and very briefly, Mr. Neill, the substance of this understanding that you had, or conversation that you had with Clarence Cunningham when he suggested he be given a one-eighth interest in your coal claim for the handling of it.—A. Well, he said that he was not drawing any salary out of the coal business and he ought to be taken care of for a one-eighth. Well, I said, now, Clarence, you are going to get a salary out of this oil business, and if it turns out well you are going to make a big thing out of it; you will have one-fifth of the property, but you can not take care of your own claim unless you draw a salary, if you are going to take care of that; and I think if you get a salary out of the coal business and out of the oil business you ought to be satisfied.

Q. Now, in order not to confuse the two propositions, the oil and the coal, this one-eighth interest he spoke of was exclusively in the coal claims and had nothing to do with the oil?—A. Yes; nothing to do with the oil. He already owned the oil land, I should say.

Q. When was it he had this conversation with you, approximately, concerning the getting of this one-eighth interest in the coal claim?—A. Well, when we were waiting for the boat at Kayak Island.

Q. In 1903?—A. In 1903.

Q. Now, you spoke about having sent some oil machinery up to Alaska?—A. Yes.

Q. Was that after you returned from this trip?—A. Yes; the money was raised and Mr. Cunningham purchased the drilling machinery and employed his own drillers and arranged all the details to return there by the time the machinery arrived, but I don't know whether he succeeded in getting there just on the time the machinery arrived.

Q. The funds to supply that machinery were taken out of the \$35,000 which was subscribed, I presume?—A. Yes, sir.

Q. Now, you referred to some conversation you had with Clarence Cunningham subsequently in 1904, I believe; is that correct?—A. Yes, sir.

Q. Where did that conversation occur?—A. Why, I think the next time I met him it was when he got married. Now, I think it was

the time. I am not sure about it. I believe I saw him—I know I saw him at that time.

Q. Yes. That was here in Washington, was it?—A. Yes; in Spokane.

Q. Did you have any conversation with him at that time concerning these claims?—A. Well, I could not very well, because he had his wife there, and he was newly married, and it was on Sunday evening, and there was other visitors at the house, and I could not go into any great detail with him.

Q. Do you recall whether what conversation you did have with him was concerning coal claims?—A. I asked him how the coal claims were developing up there, and mentioned the oil, too, in speaking of it; but I did not get into a good conversation with him, when he got up and left.

Q. There was no further conversation that amounted to anything?—A. No; no further conversation.

Q. Where was that conversation had? Here in Spokane?—A. Here in Spokane, at my house, 1706 Ninth avenue.

Q. I now call your attention, Mr. Neill, to the power of attorney from you to Clarence Cunningham, filed with the original papers, and now in evidence, which power of attorney bears date October 24, 1904, and which you have already on your direct examination identified as being signed by you.—A. Yes, sir.

Q. I see it is signed in the presence of William A. Corey. Who is this Corey?—A. Why, he is a clerk that works for Finch & Campbell, or did at that time.

Q. When you were in Alaska I assume that Mr. Cunningham called your attention to the improvements on your own coal claim?—A. Yes, sir.

Q. What did you find those improvements to be?—A. Open cut.

Q. Nothing else?—A. Well, there was a little short tunnel. A very short one.

Q. I now call your attention to one of the original entry papers, the affidavit of agent as to character of improvements, signed by Clarence Cunningham as your agent, and which bears date January 2, 1907, and which was executed before John W. Dudley, register of the Juneau, Alaska, land office, and I desire to ask you a question in connection therewith. For that purpose I will quote a part of this paper:

That the nature of such improvements is as follows: Cuts and tunnels on coal veins exposed by creek; joint interest in road, boarding house, and warehouse, which cost the said R. K. Neill more than \$2,000.

I now ask you if, at the time you conversed with Mr. Cunningham when in Alaska, to examine your claim, you understood that the improvements as described in this instrument were your improvements?

Mr. HUGHES. Wait a minute. I object to this question as not proper cross-examination, and I particularly object upon the ground that the question is manifestly misleading and unfair, and I think it can have no other purpose but to elicit an answer which could not convey the witness's actual meaning or intention. The point of the objection and the ground of objecting is that this witness has testified that he visited the ground on his claim in August, 1903, the facts shown in the record being that his claim was relocated, and it

being apparent from the record that the relocation did not conform to the original location, and the improvements being predicated upon and affidavits made by another person more than two years afterwards, showing work done in the interim. Now, I submit, if the commissioner please, such a question ought not to be permitted to be propounded to the witness.

The COMMISSIONER. Read the question.

(Question read.)

The COMMISSIONER. He has already said the only improvement on that claim in Alaska, and that was the only time that he was in Alaska, was a short tunnel and some openings or cuts.

Mr. SHERIDAN. My desire is to elicit, by endeavoring to refresh his recollection in this connection, if Mr. Cunningham during that conversation there in Alaska had said anything about these also being some of his improvements.

Mr. HUGHES. The improvements referred to being improvements sworn to by another person in an affidavit made two years afterwards describing conditions at the time the affidavit was made.

Mr. GRAY. Three years and a half afterwards.

The COMMISSIONER. Your idea is to ask him, you say, as to whether Mr. Cunningham, in that conversation he had in 1903, was it?

Mr. SHERIDAN. Yes.

The COMMISSIONER. In Alaska, stated to him that these improvements were on his claim.

Mr. SHERIDAN. Or were there any other improvements? I want to see if these were the only improvements he understood to be his at that time.

The COMMISSIONER. You asked him what improvements?

Mr. GRAY. He did not ask him whether there was any other improvements.

The COMMISSIONER. That would be a fair question. This question is unfair.

Mr. SHERIDAN. All right, I will put the question in that way.

Q. Did Mr. Cunningham, in any conversation he had with you, Mr. Neill, while you were in Alaska, indicate to you that you had any other improvements which were looked upon as belonging to your claim other than those you saw upon it?—A. No. He just pointed out these improvements and said that is on your ground and that is all I know about it.

The COMMISSIONER. He pointed out what improvements?—A. The improvements—the short tunnel and the open cut—and he says, "That is on your ground." Now, I don't know whether that was on my ground when they got the claim properly located or not. I did not go to every corner; I could not go to them in that short time.

Q. Mr. Neill, I now invite your attention to Government Exhibit No. 3, to which I now refer, and which purports to be a copy of a journal kept by Clarence Cunningham, and I ask you if you ever saw the original journal, which was kept by Clarence Cunningham, in which were set out the accounts of the expenditures and the work done on these claims as a whole?—A. No, sir; I never did.

Q. Now, on page 1 of this copy of Clarence Cunningham's journal, as it appears in the exhibit at the present time, is the following:

Each subscriber shall have one-eighth of his stock issued to Clarence Cunningham in consideration for his services in securing said land.

I now ask you if you ever made this arrangement with Clarence Cunningham?—A. No, sir.

Q. You received from time to time statements of account from Clarence Cunningham, did you, Mr. Neill?—A. I think I did. I don't know whether I received them all or not because I was away a great deal.

Mr. SHERIDAN. I believe, if my memory be correct, that he has already examined Government Exhibit 5.

Mr. GRAY. And 6; yes.

Mr. SHERIDAN. And 6.

Q. And you did, as near as you can recall, receive copies of this or similar statements?—A. Yes, sir.

Mr. HUGHES. He has already said he did.

Q. Now, I hand you Government Exhibit No. 7, being what is referred to as the Hawkins report on this group of entries, and attached to which is a map. I will ask you if you ever received such a report from Clarence Cunningham; and if so, when?—A. I received it; I can not tell just what day it was.

Q. At the time you did receive it was your attention called to this map attached?—A. Yes, sir.

Q. I now hand you Government Exhibits 8 and 9 and ask you if you ever received such statements as these from Clarence Cunningham?—A. Yes; I have had these, too.

Q. I now hand you Government Exhibit 29, being articles of incorporation of the Behring River Railroad Company, and ask you to state what knowledge you had of such organization at any time.—A. None whatever at any time.

Q. Did you at any time, and down to the present, have any interest in such an organization?—A. No, sir.

Q. Did you attend any meeting or have any correspondence concerning this organization?—A. No, sir.

Q. You have testified, I believe, that you received a copy of Government Exhibit 10 upon the Guggenheim matter?—A. Yes, sir.

Q. From whom did you receive this, if you know?—A. I don't know how I came into possession of that.

Mr. SHERIDAN. I now offer in evidence a letter dated May 2, 1907, and addressed to Special Agent H. K. Love, at Juneau, Alaska, and signed, or purporting to be signed, by Mr. A. J. C. Wakefield, which I wish to and shall introduce in evidence as Government Exhibit 46.

Mr. HUGHES. Assuming that the purpose is to show the signing of the affidavit and explaining the fact that it is not in the files, I make no objection to it.

The COMMISSIONER. This is the Love affidavit?

Mr. HUGHES. No, your honor; not the Love affidavit. It is a letter to which I referred in my direct examination of this witness.

Mr. SHERIDAN. That is the purpose of it.

Mr. HUGHES. No objection.

(Paper marked "Government Exhibit 46" and admitted in evidence.)

Q. Did you execute a deed in connection with the meeting, concerning which you have testified in 1907, which led up to the sending of a committee to Salt Lake City to confer with the Guggenheims?—A. That deed was executed to form a corporation, but not in connection with the Guggenheims.

Q. What did you understand the purpose of that deed to be, Mr. Neill?—A. Well, the idea was to incorporate, and to put our property into such shape so that it could be worked.

Q. What did you do with that deed?—A. I had a conference with Mr. Burbidge about the deed and he said he did not put his deed up and requested me to take my deed out. He said, "We will lose our claims if you don't do so."

Q. You did execute such a deed and place it with Mr. Wakefield?—A. Yes, sir.

Q. Did you receive it back from Mr. Wakefield?—A. Yes, sir.

Q. What became of that deed?—A. I have got that deed in my safe.

Mr. SHERIDAN. We will now ask the counsel for claimants, if they have no objection, to produce that deed, or a copy of it for the information of the General Land Office.

Mr. HUGHES. We will not object. We have not seen it, but it is fair to us to make the request openly. We will ask the witness to find it, since he has got it.

The WITNESS. I am not positive that I have got it, but I think I have.

Mr. GRAY. If he does not find it we will get you another copy.

Mr. HUGHES. We have asked several of the claimants if they had a copy of that deed, and I do not recall of but one instance where we have been told that the deed was not destroyed, and we have asked that it be given to us so that it can be placed in the record, and we will try to have it on Monday and put it in evidence, as I think it will make more intelligent testimony.

Mr. SHERIDAN. Yes.

The COMMISSIONER. Very well.

Q. Did you at any time, from the time of locating that coal claim, down to and including the time of final receipt, consult any other counsel than Mr. Wakefield?—A. No, sir; not personally.

Q. Not personally?—A. No, sir; he has been my attorney right along.

Q. You refer matters of that sort to Mr. Wakefield as your attorney do you?—A. Yes, sir.

Mr. SHERIDAN. That is all.

Redirect examination by Mr. HUGHES:

Q. Mr. Neill, Mr. Sheridan, in asking you about the improvements that you saw upon your claim, when you were in Alaska, asked you if there was anything else, any other improvement affecting your claim. Possibly you did not understand the inference he meant to leave in this record, and I now ask you as a miner—as a man experienced in mining operations, whether in your opinion the work done on the other claims in opening up the veins and showing the continuity of the veins and showing the strike at the dip of the veins, was of any benefit to your claim?—A. Why, it certainly was.

(And thereupon the further hearing of this inquiry was adjourned till Monday, December 13, 1909, at 9.30 a. m.)

INQUIRY RESUMED.

DECEMBER 13, 1909—9.30 A. M.

Hon. William J. McGee, United States special commissioner; Mr. James Sheridan and Mr. William B. Pugh, counsel for the Government; Mr. E. C. Hughes and Mr. John P. Gray, counsel for the claimants.

HORACE V. WINCHELL, a witness produced on behalf of the claimants, being first duly sworn by the commissioner, testified as follows:

Direct examination by Mr. HUGHES:

Q. State your name in full.—A. Horace V. Winchell.

Q. What is your business or profession, Mr. Winchell?—A. I am a geologist and mining engineer.

Q. I wish you would state generally, but briefly, the experience you have had in your profession, the work in which you have been engaged, and how long you have been engaged in it.—A. I graduated from the University of Michigan in 1889, and constantly since that time, or for more than twenty years, I have been engaged in the practice of my profession. For a number of years I was in the Lake Superior region, and for the past fifteen years in various portions of the United States, Mexico, British Columbia, Canada in general, and in Alaska. I have conducted explorations for various corporations. I have been interested in properties and managed them myself. I have paid particular attention to iron mines, copper mines, and coal mines; and in the course of my practice, I have explored, developed a great many thousand acres of land containing coal. I have been familiar with the natural resources and development particularly of the northwest, and I made many examinations of mining properties in the northwest between Montana and Alaska; and upon some seven or eight occasions have visited Alaska for that purpose.

Q. Mr. Winchell, acting for yourself and others, you purchased six of the claims of the defendant entrymen who are defendants in this proceeding, I believe?—A. Yes, sir.

Q. I wish, Mr. Winchell, that you would state in detail the circumstances leading up to your interest in this question and the investigation of it, and your reason for making the purchases. I shall ask you later about the details of the purchases, but this question is preliminary.—A. My first information regarding coal mines upon the Pacific coast was gained in 1894. At that time I made examinations of properties in Washington, upon the western slope of the Cascade Mountains, and subsequently I examined the coal mines in Oregon, and at a later period became familiar with the coal lands of British Columbia. I was thus well acquainted with the general character of the coals and the coal deposits of the Pacific so far as they are situated in this country.

Q. And British Columbia? You mean the United States and British Columbia?—A. Well, North America in general. In 1903 I made a trip to Alaska for the purpose of investigating the mineral resources of that territory.

Q. Pardon me, you have spoken of coal. I would like in this connection to ask you whether you had also, prior to 1903, made an investigation of the iron deposits of the Pacific coast, so far as has been known and developed?—A. I had done so; yes. My first extensive

work was work in connection with the iron ore in the Lake Superior iron district. I was assistant geologist of the State, and I made the first report on the Mesabie iron range, and was later on in charge of the exploration for the largest iron mining corporation then in existence, and developed some of these iron mines. I was, therefore, very familiar with iron plants, and have some acquaintance with the people interested in them; and as I said, I had made frequent trips to the coast for the purpose of examining iron ores, as well as coal, upon the coast. I knew that the establishment of the iron and steel industry upon the Pacific coast depended largely upon the discovery of the raw material, of requisite quality and quantity—that is, of iron ore and coking coal; and I knew that the coals of Washington did not make first-class metallurgical coke and that the coal of British Columbia, besides being of only medium grade, was subject to a duty upon being imported into this country; and I was constantly in search for coal of high grade and coking properties.

Q. Now, you may go on where I interrupted you, as to your first trip to Alaska, and state what you learned on that occasion, so far as it may lead up to the ultimate inquiry I suggested a moment ago, I proposed to make, or for the reasons for your becoming interested ultimately in the purchase of these claims.—A. Being a geologist and familiar with geological survey work, I was familiar with the various reports from the earliest times on the coal and other resources of Alaska, as well as in the United States, and I was under the impression that the coals of Alaska were generally lignite and not coal of high grade comparable with those found in the eastern portions of this country; but in 1903, in the course of a trip to Alaska, I made the acquaintance of an English coal expert, who showed me analyses and samples of coal from near Katalla, in the Controller Bay district. I stopped at Kayak on that trip, and I heard more about coal and oil in that vicinity. At that time I was under the impression, and was so informed by this English gentleman, that there were no laws providing for the sale of coal lands in Alaska, and I therefore simply noted it as a matter of general interest, but nothing in which action could be taken immediately. Keeping it in mind, however, and reading, as I have said, all of the reports of the United States Geological Survey and others, I learned during the years 1907 and 1908 that coal—some coal locations had been made and that there was some law providing for the sale of coal lands in Alaska. Pursuing an investigation into that matter, I was directed to Mr. Cunningham, and went to Seattle for the purpose of meeting him, and he told me about the location of the coal claims.

Q. What date, please?—A. This was on the 27th, 28th, and 29th of April, 1908.

Q. Proceed.—A. Up to this time I had been under the impression that only squatters' right would prevail; that there were no other rights in Alaska for taking coal than squatters' rights. At this time I learned of and saw a copy of the statute providing for the sale of coal lands in Alaska, and I at that time inquired whether I could purchase a coal claim; whether there had been legitimate entries made. Mr. Cunningham informed me that a number of coal claims had been entered by different individuals, but he knew of none for sale. He promised, however, when I left him that if he should hear of anyone desiring to sell that he would notify me. This he did

later in the summer of 1908, and I again went to Seattle and found—

Q. Did he notify you what particular claim that you subsequently purchased?—A. Well, I don't know much about the claims—

Q. I mean whose claim.—A. Why, he did; yes; when I got there, and possibly before. Of course, I had seen him in St. Paul just before going to Seattle. He told me that the claim of a man named Nelson, who had died—and his estate was in process of administration—could be purchased; that the estate was desirous of disposing of outlying interests and turning them into cash, and that there was a considerable indebtedness against the estate; that they desired to liquidate. I went to Seattle in 1908. I will refer to the exact date—I made a memorandum of it here—the 18th of August, 1908; and I found that the Frick claim, belonging to Mr. Nelson's estate, could be purchased for \$15,000. I consulted an attorney and had him investigate the matter and was advised that the location was made in proper form and that every provision of law appeared to have been complied with; that the receiver's final certificate had been issued and conveyed equitable title to this claim, vesting it in Mr. Nelson; that the only adverse claims made by the United States upon the grounds of irregularity or fraud in the original entry of it in some way in connection with the procuring of his claim; that so far as could be ascertained the administrators had a perfect right to deed this claim to me and that I was justified in buying it; and I therefore purchased it, taking from Mr. Nelson's administrators, I believe you call them, or trustees—

Q. Whether they are executors, executors or trustees, under the will.—A. Well, whatever it was; and I accepted a form of warranty deed, which was prepared by Mr. Kelleher, attorney for the executors, and approved by Mr. Powell, the attorney whom I consulted.

Q. Mr. John H. Powell, of the firm of Peters & Powell?—A. Mr. John H. Powell; I don't know his firm name; but he was a friend of mine in Ann Arbor at the time I was there.

Mr. SHERIDAN. Where?

The WITNESS. Of Seattle. After procuring this claim I endeavored—

Q. Before you leave that, one other question: Were you through with that?—A. Yes, sir.

Q. Before you pass to another subject, of another claim, I will ask you if your attorney made inquiry and investigation of Mr. Cunningham, or of the administrators, or others, as to whether or not there were any irregularities or any grounds existing upon which the Government might set aside or cancel the entry, or might undertake to do so?—A. Yes, sir. Both of us made inquiries and investigations; we investigated the law under which this claim was located; we inquired of Mr. Cunningham regarding all the particulars of the location; we were told that patent had not been issued, but would be coming along in a very short time; undoubtedly it might be issued within a month; and as a matter of fact, if these patents were issued as soon as they were expected to be, in all probability I might have to pay more for it, because at the present time the claim was in a rather questionable condition and the executors of the estate knew nothing whatever about Alaska or the conditions up there, and they said, "We have been to considerable expense in this matter of Mr.

Nelson's estate, and we would like to get it off of our hands;" and everything appeared to be proper, and I was so advised.

Q. The Mr. Nelson referred to was Nelson B. Nelson, of the company of Frederick & Nelson?—A. Yes, sir.

Q. Of the city of Seattle?—A. Yes, sir.

Q. Now, proceed.—A. Yes. I was introduced to Mr. Frederick by Mr. Kelleher, the attorney for the executors, and talked with him about the matter. I had, as I say, in connection with my interest in coal and other valuable minerals, made up my mind that here was a field which contained the most attractive opportunity for engaging in the mining of coal, and which contained coal that from its analysis was superior to anything on the Pacific Ocean. I might say that I had compiled several thousand analyses of coal from various parts of the world, and my attention was attracted repeatedly to the analysis of the Alaskan coal. I made up my mind that I would endeavor to purchase additional claims which by reason of their proximity to this first claim and their location in the field, as shown by the geological survey maps and reports, and as shown by Mr. Hawkins's report, of which I received a copy from Mr. Cunningham at the time I purchased the Frick claim, were of sufficient value to justify my doing so; and I proceeded to inquire of other claim owners in this vicinity, the owners of those claims which I particularly desired to procure, whether they would sell, and found that it was going to take more money than my means would permit, and I spoke to other friends of mine in Minneapolis—

Q. Give the names, please.—A. Mr. R. B. Bennett, a lumberman and iron mine owner. He became interested in the matter with me, and together with Mr. C. H. Davis, of Saginaw, Mich., a friend, who has also retired from business, also a lumberman and property owner, concluded to join me in this matter.

Q. Mr. Davis was an acquaintance and friend of both yourself and Mr. Bennett?—A. Both myself and Mr. Bennett had known Mr. Davis for many years, and I think Mr. Bennett is related by marriage to Mr. Davis. They had many interests together, and we therefore entered into negotiations with another of these entrymen, and I purchased subsequently the Deposit claim from Mr. Burbidge on October 4, 1908; the Carlsbad claim, belonging to Mr. Neill, Mr. R. K. Neill.

Q. Pardon me. State, when you specify the claim, the person from whom you purchased in each instance, if you please, and state the price, so I need not repeat my question—the price at which they were purchased and paid to each individual claim owner.—A. Yes, sir. The Deposit claim cost me \$18,000.

Q. The Burbidge claim?—A. The Deposit claim was the claim owned by Mr. Burbidge, and the Carlsbad claim, owned by Mr. R. K. Neill, was purchased February 2, 1909. It was purchased from Mr. F. S. Johnson, or through him. He had an option upon this claim, and the price was \$15,500. The Newgate claim I bought from Mr. Schofield.

Q. Of whom?—A. Mr. Schofield.

Q. What date?—A. Upon March 12, 1909, and the purchase price of that claim was \$15,500. The Clear claim I bought from Mr. Riblett on June 26, 1909, paying \$20,000. The Rutland claim I

bought from Mr. J. H. Neill for \$15,000. I have not that date here, nor the price, but it was somewhere near the 15th of August.

The COMMISSIONER. What year?—A. 1909.

Q. What was that last claim?—A. From Mr. J. H. Neill, the Rutland.

Q. Prior to the purchase of the Rutland claim, in respect to each of the preceding claims which you purchased, after the purchase of the Frick claim from the estate of Nelson, I will ask you if they were conveyed to you by the same form of deed—that is, following the same form of deed which had been prepared by Mr. Kelliher as to the warranties, the special warranty clause, from the grantor.—A. The form of deed was the same as that prepared by Mr. Kelliher. These were not all conveyed to me, but to me or to my associates. One other associate I have heard mentioned was Mr. Fred B. Snyder, of Minneapolis.

Q. But that matter was taken up later, before the purchases were all consummated?—A. Yes; and the latter consented to join me in the matter—an old friend that I have known from boyhood.

Q. In making these subsequent purchases, excluding the Rutland—now, my inquiry is related to all except the last purchase—what steps, if any, did you take for the purpose of ascertaining whether or not there were any irregularities affecting these entries and the equitable titles you purchased?—A. I have consulted other attorneys besides Mr. John H. Powell, in Idaho, Minneapolis, and New York. I also took the precaution, which I thought was only fair to my associates and myself, to procure from the entrymen selling to me, in each case, an affidavit strengthening or guarding against the exception made in this special warranty deed—that is, an affidavit stating that they had made the entries for their own benefit, and without any agreement or understanding that anybody else had any interest in it; and I wanted to be sure that there would not be any trouble at a subsequent time about people coming along, some prospector or other, and saying, "Why, here, don't you remember I talked to you about that thing, and we discussed Alaska, and you went up there and located a claim, and I think I ought to be in on that?"

Q. Was that such an experience as your experience has shown that is likely to arise?—A. Very likely to arise after a property has been proven to be of some value. I took an affidavit from each of the gentlemen except Mr. Joseph H. Neill.

Q. Well, he was the last?—A. He was the last man whom I purchased from.

Q. Up to that time had you received any other or different information respecting these claims than that which you have already detailed as the information that you had at the time of the purchase of the claims?—A. Up to the time of about the last day of June last, and I expected constantly from week to week to receive advice that these patents had been issued. I went to Europe last March, and returned from Europe about the latter part of June, and was then advised by Mr. Gray and by Mr. Cunningham, whom I met in New York, that there was still a delay in the issuing of these patents, and for the purpose of ascertaining what this delay was I made inquiries of the department. Shall I proceed with that?

Q. Yes.—A. Mention the trip I took at that time?

Q. That was the purpose of my question, to bring out when you obtained any information or advice if there were or was any delay, or any cause for delay, and how and from whom, and what that information was as well.—A. I went to Washington and had an interview with the Assistant Secretary of the Interior; I told Mr. Pierce that I had purchased some of these coal claims; that I was very anxious to proceed to develop the coal claims and to begin coal-mining operations; that it would be impossible for me to raise the money required for developing the coal mines until these patents were issued, and I wanted to know what the reason was that patent had not been issued long before. I said, "I am given to understand, Mr. Pierce, that there is no real reason; there is no objection against the issuance of patent; I have been told that it was hoped, on the part of some one down here in Washington, to change the coal-land laws so that coal lands in Alaska—so that some additional provisions might be made." I says, "Do you claim that there is no necessity for these claims to wait for the passage of new legislation?" and he smiled and said naturally these claims had acquired a standing which would not be affected by subsequent legislation. I said to him, "Now, Mr. Pierce, if there are reasons why these patents can not be issued, I would like to know it." Mr. Pierce said there had been "charges preferred and filed in this department of some nature which prevents the issuance of these patents." I said, "What are those charges?" He said, "I can not tell you the exact nature of the charges, but I will state until these charges are disposed of these patents can not be issued." I said then, "Mr. Pierce, it seems to me it is only fair to myself, and to the other owners of claims, in this matter, against whom charges have been made, that we have an opportunity, at as early a date as possible, to meet these charges;" I says, "I can not afford to spend my time and money waiting. My money is in there and I would like to have them settled, and have the whole matter disposed of and cleared up; and I have no doubt that I shall be—that it will be disclosed that I am entitled, and my predecessors in interest, to patent on the claims." Mr. Pierce said, "Mr. Winchell, there is no disposition on the part of the department to delay this matter. What you say certainly has a basis of justice, and it is only fair, and I will say to you that there will be no further unnecessary delay; that this matter will be arranged—that is, the hearings will be provided for and a commissioner will probably be appointed by the department, so that we will cut out what lot of red tape might be involved, and what expenses might be required in going to Juneau to present your proofs and hear any charges there, and the matter will be investigated independently and decided by this department." I thanked him and told him that was exactly what seemed to me right, and I came away expecting—

Q. It was at that time, and pursuant to that talk with him, and that was the beginning of the step which led up to the present hearing?—A. Yes, sir.

MR. HUGHES. Now, this has been brought out for no other purpose in this case except preliminary to an inquiry about a purchase made by him subsequent to that time, for the purpose of showing the knowledge and intention that Mr. Winchell had.

Q. Now, then, explain about the Neill transaction.—A. Subsequently I was informed I could purchase the claim of Joseph H.

Neill; and I said, "I am not going to purchase any more of these claims; there are charges against them; although I don't know what they are going to amount to, and I have believed all the time that these claims were ready for patent."

Q. I want to ask you if Mr. Pierce indicated in any way the charges or the nature of the charges?—A. No, sir; he did not; he did not tell me the charges. He said he would give instructions that the charges would be formally filed at an early date. That is all I know about it. I refused to purchase the Joseph H. Neill claim. Mr. Neill said, "Why, my claim is absolutely good, and I am entitled to my patent, but I don't want the money unless I get the patent." Well, I said, "If you will agree to give me back my money in case you don't get a patent, I will buy it, if you want to use the money for a time," and he gave me the warranty deed.

Q. A full warranty deed?—A. A full warranty deed, which was the only one of that kind which I took, and which was different from the others.

Q. Now, Mr. Winchell, you went to Alaska after that time, yourself, did you?—A. Yes, sir. I went to Alaska last August.

Q. Now, then, explain when you went and for what purpose, and what you did in pursuance of it—I mean in connection with it; I mean by that to bring out in this answer what steps you took to have an investigation made of the properties, as well as your investigations on this trip?—A. I had never examined this coal field. I was making my purchase entirely upon information which I believed entirely trustworthy, of engineers and geologists, and others, that I had talked to about it, and I had seen samples of the coal on the outside.

Q. When you were say talking about, you include in addition to that, the reports you had seen—the government reports as well as information aside from the men you were talking with?—A. Well, I intended to refer to that. I decided to take with me an engineer who had had experience in estimating the expenses of development, and who knew how to design plants, and who had built a great many tipples, and coal-handling plants; and I therefore negotiated with Mr. Frank C. Green, from Cleveland, Ohio; for the purpose of affording him the most valuable assistance in the way of geological study and interpretation, I engaged my brother, Prof. A. M. Winchell, of the University of Wisconsin, at Madison; and together with those gentlemen I went to Alaska in August and we got part way and we were wrecked.

Q. On the Ohio?—A. On the Ohio; and I returned to Seattle and purchased a new outfit, and started back again, and went to the coal field. I made an examination of the field myself, as to its general conditions. I staid up on the ground about five days, and my brother and Mr. Green were there for three or four weeks. Mr. Green has been in the West almost constantly since that time. I have not received his report, but I have talked it over with him, and I formed a very good idea myself of the expense which will be incurred in preparing to mine coal up there, and generally as to the general conditions regarding the properties up there, from a commercial point of view.

Q. Go on and state the result of that investigation made by you, or caused to be made at that time, as far as affects the field generally, as far as affects the Kayak field, as to the feasibility of opening up

mines, and the expenses incident to it, and a preliminary development, if any, that will be necessary, the expense of attempting to open up the coal mines, providing the necessary facilities for mining and transporting the coal would justify.—A. A coal mine is valuable in one of three ways, either to sell, or to lease, or to work. In order to determine the value, information must be gathered upon a variety of matters. A great many factors enter into the value of a coal mine. If it is in a well-known field, where the geological conditions are perfectly simple, a field which has a reputation, a field whose coals are in demand, it probably has a certain established value without a great deal of exploration. If it is in a new field, from which no coal has ever been mined, or that information must be gathered about, from the geological, structural, and chemical conditions, the accessibility, the location of the fields, must be taken into account. The question of a market must be considered. As to the question of physical structure, for instance, some coals are friable, and can not be mined without going into slack quickly. Some coals will coke, and others not. There may be a good roof, or a bad roof, and the coal may lie at such an angle that it is difficult to mine, or it may lie horizontally; it may be faulted, or it may be continuous. It may be invaded by intrusions of eruptive rock which has ruined portions of it; it may be in such a condition that operations are difficult. It may be accessible from the seacoast, or it may be inaccessible. In going into a new district, therefore, to determine the value of a coal field or a coal claim, or of a group of coal claims, a district like that in Alaska, the very first thing is to get in there, and that requires trails and roads; it requires clearing away the underbrush; it requires the developing of the outcrop to ascertain and prove the seams, and their thickness; it requires the construction of camps, and all of this work affects the value of the whole, and the value of the improvements on each particular claim; and any expense upon any of those matters on the field in general is directly relative to and applicable to the ascertainment of the value of each claim.

Q. Now, before going further, you say that the opening of the seams to ascertain the thickness of them, and so forth, is advisable. What about the question of following the seams and tracing out the strike to ascertain the strike and dip of the vein; what significance has that, when it is carried beyond the claim of a particular individual locator, to ascertain the amount of the commercial value of his claim, and whether or not it is worth entering and patenting?—A. It is well known that coal, upon the outcrop, is not of the same character, usually not as good, not of the same value as it is farther into the seam; it is well known to coal miners that coal seams have pinches—strike what they call faulted ground—although it is not absolutely faulty. Therefore, before planning on or contemplating the expenditure of the amount of money required to make a successful coal-mining operation, tunnels of considerable length must be run to develop the continuity and prove the continuity sufficiently to justify the expense of installation at any particular point; and I should think, as I have stated before, that work of this nature was of vital importance not alone to the claim upon which the particular survey was made, but to the adjoining claims; every claim would be affected by the disclosures upon the other claims and in that vicinity.

Q. What you have said of tunnels to ascertain the continuity of the coal and its dip, would that be true also with respect to making openings to ascertain the extent of the coal measures on its strike, and also as throwing light in such ascertainment upon the geological conditions and upon the question of the faulting of the formation?—A. It would be valuable also upon the strike. I think I did not answer your question—I was preparing to.

Q. No, you did not do so fully, and therefore I would like to have you proceed with your answer to the original question.—A. That was the question as to the conclusions which I would reach?

Q. Yes.—A. I have arrived at this conclusion, namely, that the exploration work that has been done there up to the present time is not of sufficient character and is by no means sufficient to determine the question of the advisability of even the installation of a plant for mining coal; much more work of exploration, perhaps a couple of years' continuous work by a large number of men and with drills, will be required, and a great deal of money, to demonstrate the workable character of this coal field.

Q. You say you spent about five days on the property?—A. Yes; constantly during the daylight hours, climbing hills and wading streams to examine outcrops and tunnels, and such pits and shafts that had been made.

Q. During that time did you cover anything like the entire 33 claims, so as to make an examination of the conditions upon each claim, of the surface, and exposures, and so forth?—A. I did not. I think it would require six months to survey, explore, examine, and see every portion of the 33 claims in the Cunningham group.

Q. You gave your attention more particularly to investigation of the portion of the field in which your claims lay, and so much of the surrounding field or claims as would throw light upon the continuity of the coal measures throughout your claims? Is that it?—A. Yes, sir.

Q. Generally speaking, is the country there very rough, or mountainous, or broken on the surface?—A. It was a very rugged country. Canyons and gorges are deep, and the mountain slopes are steep, and there is a difference in elevation of something like 2,500 feet between the highest points and the valleys.

Q. You examined the Frick claim, the claims you first purchased?—A. I went along the southern side of the Frick claim.

Q. Did you find whether or not there were any openings or exposures of coal on the Frick claim? And if so, at what points?—A. Yes. The coal is seen upon the southern and southeast portions of the Frick claim, dipping underneath this claim, dipping underneath the balance of it, dipping into it, you might say; and in trenches and open cuts of any great depth it would clearly show the disposition of the coal. I consider the Frick claim one of the most valuable claims I purchased. There is no timber upon this claim. It is away up on the top of a mountain and entirely bare. It is easier to trace the outcrop of the coal than upon many other claims.

Q. Did you examine each of the other claims you purchased?—A. All except the Rutland.

Q. Except the Rutland?—A. Yes; I did not get over onto the Rutland, excepting in the end of the tunnel in the Tenino. The tunnel extending over the line into the Rutland, I saw the coal

there. I saw it, too—I saw it up on the top of the hill back of this tunnel.

Q. That is the only claim that is disconnected from the balance of the claims purchased by you?—A. Yes; the others are adjoining each other. They also have a common side line, and in one of the cases the corner on each of them.

Q. As to these claims, when you examined them you found coal exposed by cuts or tunnels, or both, on each of them?—A. Each of them; yes. All of them.

Q. Did you make any examination of the southern tier of claims?—A. I did not; no, sir.

Q. Have you had any opportunities to purchase these claims, any of the claims, I mean, along the southern tier?—A. Yes; I had had opportunities to purchase. I have been told that I could buy several, but I did not purchase them. I desired to consolidate the claims which I had purchased into one compact group, if possible—that is, I desired to purchase claims which were in juxtaposition, and I did not believe from the geological survey and map that the geological conditions upon the southern tier of claims was as favorable as those farther north; had that belief, I mean, while I was on the ground, substantially that belief, although I made no careful examination of this southern tier of claims.

Q. Now, what led you to purchase the Rutland claim, which is disconnected from the others?—A. In the first place, of course, because I had my warranty deed which was delivered to me—there was no chance whatever to lose any money; and, in the next place, because I might not be able to purchase such claims as I desired immediately adjoining those I had already purchased, and the ownership of the Rutland claim might furnish me with a source on which to draw at some time in acquiring any particular claim adjoining mine, and that it would in that way enable me to be in a stronger position to further command my own properties.

Q. As to enable you to get a sufficient body of coal land there by purchase, or at least to justify the opening up of coal mines if exploration disclosed it was profitable to develop?—A. That was my idea.

Q. Mr. Winchell, since the principal reasons for producing you and examining you in this case is to inquire into your motives, for the ascertaining whether any fact exists in connection with any of these entries indicative of any violation of the law at the date of their location, or on the theory of the Government that any time prior to final entry the material consideration here has been your holdings and those of your associates, concerning which I have been asking questions; and I want to follow by asking one additional question: Are you and your associates in the purchase of this property interested directly or indirectly with the Guggenheims or with the American Smelting and Refining Company, or any other person or company or association alleged by the Government in these proceedings to have had any interest in any of these claims prior to the issuance of final certificate and receipt?—A. No; we are not. I have never had any acquaintance with or business connection with the Guggenheims or the American Smelting and Refining Company; nor do I know of any other business connection which would connect myself and my associates with those interests.

Q. Or with anyone assuming to be interested in this Copper River Railroad Company, or the Copper River and Northwestern, or whatever its name is, which is projecting and building lines of railroad in the Copper River region in Alaska, and which has been mentioned as having projected a line to these coal fields?—A. No, sir; we are interested in it purely as individuals, and in no other way.

Mr. HUGHES. Take the witness.

Cross-examination by Mr. SHERIDAN:

Q. How old are you, Mr. Winchell?—A. Forty-four years old.

Q. How many trips did you make to Alaska from the time you first became interested in these claims?—A. One—one and a half—I got partly up there on the other time.

Q. Who were with you, if anyone, other than the engineer of whom you spoke?—A. Mr. Gray, Mr. John P. Gray, Mr. Clarence Cunningham, Mr. C. F. Booth, Mrs. Gray, Mrs. Green, and Mrs. Green's younger son.

Mr. HUGHES. And your brother was not included in this question of counsel?—A. I assumed that he meant to include him as one of those persons that I mentioned that went with us.

Q. Now, Mr. Winchell, I believe you have stated that your idea was to have contiguous claims?—A. I desired to purchase claims which could be operated together.

Q. Since we have had your opinion—and I am glad that we had it—as to the possibilities of this field, I now want to ask you if you could, in your opinion, successfully operate 160 acres of coal land by itself in Alaska?—A. No, sir.

Q. Considering what you know of the field in which these claims are located, would you state about how many acres of coal land you would consider a sufficient area to make a profitably operating field?

Mr. HUGHES. Objected to as incompetent, immaterial, and irrelevant.

The COMMISSIONER. He may answer the question.

A. That question involves a great many considerations. Mere area is not the essential thing. The essential thing is coal in the ground that can be mined. You might have 10,000 acres of ground and have only 500 acres of coal; and you might have 10,000 acres, 9,000 acres of which only contained one 2-foot coal seam, while on the other thousand there were two or three other seams of workable coal.

Q. True; but I say, based on your knowledge of this field, and what you saw, and what you learned of it, and which induced you to make your investigation, how many acres do you consider essential to operate the field there?—A. Well, based upon what I saw of this field, it would be necessary to make a good many explorations before even deciding which, if any, portion of it could be worked in the whole 5,000 acres. There is one single positively workable coal vein. I do not think, and do not consider, that the whole group of claims present an area, at the present time, sufficiently developed to justify the expense of building a railroad and wharves, and putting up tipples, and building residences, and putting up power plants for the purpose of operation.

Q. You purchased six of these claims, as I understand you?—A. Six; yes.

Q. Now, take up the Deposit claim. I want to ask you in that connection in what way did you purchase that claim? What I mean

by that is this: Did you purchase it by deed direct to yourself from the entryman who had located it, or otherwise?

Mr. GRAY. I think that is entirely immaterial. Mr. Winchell purchased it and it was held for these people, and the question where the title rests and in whose name it is is entirely immaterial.

The COMMISSIONER. You have the title to the property now?

The WITNESS. Yes; it is in my name.

The COMMISSIONER. I do not see how that is material.

Mr. HUGHES. There is no controversy about the title; it seems to be the motive.

The COMMISSIONER. That seems to be the question here, the motive of the purchase.

Mr. SHERIDAN. I submit it will help to show what the motive was if it can be shown that these titles came to other people before coming into Mr. Winchell's possession, and I propose to show that if I am allowed to.

The COMMISSIONER. I don't see how it is material.

Mr. HUGHES. I want to make the statement here that the only possible basis for the statement of counsel that he proposes to show that other persons received the title before it came to Mr. Winchell is the information I gave him personally on account of the professional relationship which exists always between counsel in a judicial proceeding, to the effect that Mr. Gray acted as agent, being the attorney and personal friend of Mr. Winchell, in the consummation of the purchase of the R. K. Neill claim, drawing upon him for the purchase price, and not knowing whether Mr. Winchell wished the property taken in his own name, as he received and paid for the money, drew the money from Mr. Winchell, and paid it to Mr. Neill, and took the title in his own name, and then transferred it as soon as Mr. Winchell indicated to whom he wished a deed made. That information I gave him, and stated to him at the time that, inasmuch as Mr. Gray was counsel in this case, I preferred not to have to make that explanation of record, and I have now made it of record, if counsel wants it, and that I assure counsel is the only thing he can show by the production of these deeds.

The COMMISSIONER. I was not aware that Mr. Gray has taken title in his name at all. I was not aware of that. I merely sustained the objection because it occurs to me it is wholly immaterial. That is the only ground that prompted me in sustaining the objection.

Mr. SHERIDAN. I now want to define my position in the matter. I believe that any facts which are facts of record will be explanation of the record. I am not saying that there was anything improper in anything that was done, but my duty as representative of the Government in this inquiry is to put the facts of record, and if there is any discretion to be exercised, whether or not the matter is material after it is of record, why, I want the authorities in Washington to decide it. That is my object.

The COMMISSIONER. Well—

Mr. SHERIDAN. I will say that is the question, and the special commissioner decide whether he should rule on it—

The COMMISSIONER. The matter being immaterial, it resolves itself into being obviously irrelevant. If it is immaterial, it has no business in the case and can be considered obviously irrelevant; but, in

view of the statements made by the counsel for claimants, the witness may answer the question.

Mr. SHERIDAN. Now, if the commissioner please, with a view of abbreviating the matter, I will ask Mr. Hughes to state if there are any other similar instances which apply to any other transfer; and if not, we will abbreviate that point.

Mr. HUGHES. There are not. I stated to counsel in the beginning, and state it here, and now repeat it, that is the only exception; and this was done for the reason that Mr. Winchell has taken title to these properties—each of these properties—in his own name, or in the name of one or the other of the persons who have been mentioned. He has a number of deeds here, and he tells me they are locked up in his safe, which, by reason of his absence, his wife was unable to get them and forward them to him; and it seems to me that this statement ought to be sufficient. The only inquiry here is the reason for his purchase. We have gone into this matter because this proceeding seems to have gone upon the basis of judicial proceedings which exist only in tyrannical forms of government, and not in our own, namely, that the man accused must take the burden of showing his innocence; and we have put our witness on the stand for the purpose of showing the facts, and subjecting him to cross-examination.

Mr. SHERIDAN. Well, I am not going into any lengthy discussion, but I just wish to remark that if it be tyrannical to have facts appear of record, why, I did not so understand that was the definition of the word.

Mr. HUGHES. I don't mean to say more than we have assumed the burden which would be cast upon us in that system of judicial procedure and we have come forward, and I don't mean to say that we have been forced to do it; I simply mean to state that we have reversed the ordinary judicial procedure in this case and have come forward ourselves in each instance; and that is the reason why we produced Mr. Winchell when there was no occasion for doing so, and there would have been none. I make that statement, not as any reflection upon your position, but we simply—simply because we have taken upon ourselves the responsibility of producing our witnesses so they could be examined by persons who had no claim to this property; and, in reality, until the burden had been sustained by the Government, we would not have been compelled to do it. I do not mean any reflection upon you or your associates in this proceeding by that remark.

Mr. SHERIDAN. I wish to state it is my understanding still that the burden rests upon the Government still to establish its charges, and that has not been the object at all—

Mr. HUGHES. No; I am not assuming that. We have done it, as I say, simply as an exhibition of our good faith in the matter, so we might not be under any suspicion, and because counsel stated he desired an opportunity to cross-examine our witnesses. I made that statement before resting the Government's case.

The COMMISSIONER. Proceed.

Q. Now, with reference to this examination which you made of this group of entries, or the part of them, I believe you stated you confined your attention more especially to those which you had acquired title of?—A. Yes; I was more particularly interested in those.

I went from one end of the field to the other. I mean from one end of the Cunningham—so-called Cunningham—claims to the other, and crossed them in both directions, but I did not see all of the claims.

Q. You did not, then, as I understand you, attempt to pass upon the developments and the nature of all of the cuts and trails which appeared on each and every entry in this group you spoke of?—A. Oh, by no means. We saw quite a number at a distance that I knew nothing about, or how extensive they might be.

Q. The purpose of Mr. Green's visit to Alaska, and your brother, Professor Winchell, was to enable you to determine the value of that field?—A. Yes; to make a report to me solely.

Q. Did you have the services of any guides while you were in that country on those claims?—A. Yes; there were two men at the cabin upon Clear Creek, and one of them went with us.

Q. What was his name?—A. Jim McGrath. Mr. Cunningham also went over the ground with us.

Q. Now, you mentioned the names of attorneys you consulted in this matter?—A. Yes.

Q. I believe you mentioned the name of all you consulted; am I correct in that?—A. No; I mentioned only one I consulted; some of them which I consulted—

The COMMISSIONER. How is that material, Mr. Sheridan, who he consulted?—A. I want to have it.

The COMMISSIONER. Are the attorneys involved here, too?

Mr. SHERIDAN. That will be material if it is shown that any one of those attorneys would be the attorney of a corporation who was interested in this land, and in order to determine whether or not such be the case I am obliged to ask the question.

Mr. HUGHES. I think, in view of that statement, we ought to object; but I think possibly it is well known that attorneys in general practice have a variety of clients—

Mr. GRAY. It is not shown any corporation was interested.

Mr. HUGHES. No; I don't think so.

Mr. SHERIDAN. The commissioner can rule on the matter. I submit there is much of the evidence already introduced into this record which requires certain things to connect, and in order to determine whether or not certain parts of the evidence is entirely material to this issue it will be necessary to press it along such lines as this.

Mr. HUGHES. We have been chasing will-o'-the-wisps of suspicion throughout this entire case, but if counsel wants to pursue any others, let him go ahead. I don't think it is material.

Mr. SHERIDAN. I wish to state that I have asked the question for the reason that Mr. Winchell has mentioned the fact that he did consult counsel, and he has named some of them, and I want the rest of the names; that is all.

Mr. HUGHES. We won't object; let it go.

The COMMISSIONER. Very well; take the answer.

A. Did you ask for the names?

Q. Yes; and their places of business.—A. Mr. John H. Powell, of Seattle, Wash.; Mr. John P. Gray, of Wallace, Idaho; Mr. John R. Vanderlip, of Minneapolis; and Mr. John M. Blair, of New York City—four Johns.

Mr. SHERIDAN. That is all.

Redirect examination by Mr. HUGHES:

Q. You spoke of there being two men there at the cabin. What were those men there for; do you know?—A. Yes; they were there for the purpose of keeping or caring—care takers for the claims, looking after the premises.

Q. Tools and machinery?—A. Property of various sorts which was there; yes. I was very glad to find somebody there, because if I had not, I should have felt I would be obliged to place some one there myself to look after the premises I had purchased. There are some trees there; I would not care to have them burned up, or to have anyone cut them down. It is necessary to have some one there to look after the premises.

(Witness excused.)

The COMMISSIONER. Is that all the testimony?

Mr. GRAY. Yes.

The COMMISSIONER. Have you any further testimony, Mr. Sheridan?

Mr. SHERIDAN. I have two witnesses to call; they are very brief, and they are not here now. I think I will be able to have them here by 2 o'clock this afternoon, and no great time will be necessary to dispose of them.

(And thereupon the further hearing of this inquiry was adjourned to 2 p. m. of December 13, 1909.)

INQUIRY RESUMED.

DECEMBER 13, 1909—2 P. M.

Appearances: Mr. William J. McGee, United States special commissioner; Mr. James M. Sheridan and Mr. William B. Pugh, counsel for the Government; Mr. E. C. Hughes and Mr. John P. Gray, counsel for claimants.

Mr. SHERIDAN. I now desire to call William Griffin Hall; this is the witness that I asked to be called by the Government, and his testimony taken under my reservation at Seattle.

Mr. GRAY. This is the testimony that Mr. Sheridan reserved the right to take at Spokane, while we were holding in Seattle.

Mr. SHERIDAN. Yes. This testimony will be introduced in its regular place in the Government's testimony; and, as stated by Mr. Gray, this is the testimony which I there stated would be produced at this point.

WILLIAM GRIFFIN HALL, a witness produced by the Government, being first duly sworn by the commissioner, testified as follows:

Direct examination by Mr. SHERIDAN:

Q. State your name, residence, and occupation.—A. William Griffin Hall; my residence is 502 Sixth avenue, Spokane; my occupation is cashier of the Union Trust Company.

Q. Of Spokane, Wash.?—A. Yes; of Spokane, Wash.

Q. Now, Mr. Hall, I wish to ask you a question concerning certain deeds already referred to in the testimony in this inquiry; and for the purpose of making clear to you my purpose I will quote

from Government Exhibit 10, and then ask you concerning the part which I quote from this exhibit (reading):

In order to consolidate the several interests for the purpose of dealing with such property as an entirety, it has been determined that each of said entrymen should convey his title to his individual tract to the Union Trust Company of Spokane, Wash., in trust for the purpose of transmitting or dealing with the title to the consolidated tracts in such manner as shall be directed by C. J. Smith, R. K. Neill, H. W. Collins, Frederick Burbidge, Fred H. Mason, A. B. Campbell, and Clarence Cunningham, or a majority of those acting as a committee of such entrymen appointed for such purpose.

Conveyances by some of said entrymen to said trust company have been executed and delivered, and it is contemplated that all will execute similar conveyances within a short time.

I ask you, now, if you have made an examination of the records of the Union Trust Company of Spokane, Wash., in compliance with my request made to you Saturday and along the lines indicated of the list of entrymen concerned in this inquiry, and if so, what the result of such examination has been?—A. I have made such examination and found nothing in the records of the company concerning the names of any of the parties on the list which you give me covering these matters.

Q. So, as far as you were able to learn from the records of your company, and to which I understand you have full access, there is nothing there to show that such deeds were ever placed in escrow or otherwise deposited with your company in accordance with this memorandum?—A. No, sir; there is nothing.

Mr. SHERIDAN. That is all.

Mr. GRAY. I think you made the statement, Mr. Sheridan, that you gave him a list of the entrymen?

Mr. SHERIDAN. Yes; I wish to state that on Saturday last I left with Mr. Hall a list of the thirty-three entrymen involved in this inquiry here that he might verify this point and learn whether or not any such deeds had been placed by any of such entrymen in the possession of his company.

Mr. GRAY. Very well. No cross-examination.

(Witness excused.)

W. J. C. WAKEFIELD, a witness produced by the Government, being first duly sworn by the commissioner, testified as follows:

Direct examination by Mr. SHERIDAN:

Mr. SHERIDAN. I wish to state on record at this time that Mr. Wakefield's testimony will also be included in the Government's case, being a part of the testimony stipulated for between counsel at Seattle, Wash., and will be therefore entered in its regular place in the Government's testimony.

Q. State your name, residence, and occupation.—A. W. J. C. Wakefield; Spokane, Wash.; lawyer.

Q. Mr. Wakefield, before propounding to you a question concerning certain deeds already referred to in the testimony in this inquiry, and with which your name became connected, I wish to call your attention first to a list of names of the entrymen in this inquiry, so that you may properly understand the question which I shall later propound to you [handing witness paper]. Testimony has been introduced on the part of the claimants in this inquiry to the effect that certain deeds referred to in Government Exhibit 10 have been

placed in your possession some time in 1907. I now call your attention to Government Exhibit 10, and especially that part thereof which I shall now quote to you, and subsequent to which I shall ask you a question (reading):

In order to consolidate the several interests for the purpose of dealing with said properties as an entirety, it has been determined that each of said entrymen shall convey his title to his individual tract to the Union Trust Company, of Spokane, Wash., in trust for the purpose of transmitting or dealing with the title to the consolidated tracts in such manner as shall be directed by C. J. Smith, R. K. Neill, H. W. Collins, Frederick Burbidge, Fred Mason, A. B. Campbell, and Clarence Cunningham, or a majority of those acting as a committee of such entrymen appointed for that purpose.

Conveyances by some of said entrymen to said trust company have been executed and delivered, and it is contemplated that all will execute similar conveyances within a short time.

I now ask you if you had any information concerning such deeds? And if so, please state fully what your connection therewith had been.—A. Before answering that question I wish to state that my connection with this matter was purely a professional one, and I would not care to testify about it except with the consent of my clients.

Mr. HUGHES. Under the law of this State, under which Mr. Wakefield practices, he is not at liberty to disclose anything which came to his knowledge by his professional relationship between him and his clients; but in order that a wrong inference may not be drawn, not by the counsel for the Government or by the Department of the Interior, but by others who take interest in these proceedings, therefore we will not refuse our consent to his testifying. I want to say, on the other hand, that I am perfectly willing, and we are perfectly willing, to give our consent to the matter under consideration, and Mr. Wakefield is at liberty to tell whatever he knows regarding this case.

The WITNESS. Will you read the last part of that question?

(Last part of question read.)

A. Some time in the latter part of May, I think it was, or early in June, 1907, I was called to the offices of Messrs. Finch & Campbell. After reaching there I was asked the question if it would be legal to organize a corporation, under the laws of the State of Washington, to take title to certain coal lands for which final receipt had been issued. I advised them that in my judgment it would be legal. There were several gentlemen at this meeting. The chairman then stated that a committee would be appointed to take up the matter further with me if deemed advisable. Either that same day or the following day a committee called at my office and we went into the question of the organization of a corporation. They stated that there were, I think, in the neighborhood of some 30 entrymen, and that only part of them had attended the meeting referred to. I found, after going into the matter further, that they were not agreed as a committee with relation to several important matters concerning a corporation. I think one matter was the question of capitalization. They were also not certain that they could secure the desired number to form such a corporation. After discussing the matter in full, I think I suggested that instead of going to that expense that it would be well to inquire from these different entrymen and take the

title in trust or convey the title to a trustee until that matter was determined. It was then suggested that I act as such trustee, and I objected to that, because I did not think it was proper. Then a trust company was suggested, and finally it was settled upon that I ask the Union Trust Company of Spokane to act, and I was to prepare the necessary deeds. I dictated a form of deed for the conveyance and our stenographer then ran off the deeds. Some of the deeds, I think, were brought into the office personally by some of the entrymen and afterwards several were sent in through the mails. As fast as any were delivered they were put in our vault in the Peyton Building. About the middle of July, I left the city and was absent until late in August. Upon my return I was told by Mr. Campbell, my neighbor, or shortly thereafter, while walking in front of our homes down there, that the deal in relation to this organization of this corporation was off. After that I found at the office that some of the entrymen had called and requested a return of their deeds, and also that some letters had come in requesting the return of these deeds. There were probably, I think, in the neighborhood of 15 of these deeds that had been delivered in that manner, and, finally, one day I know that some one came in while I was engaged and called for one of these deeds, and we had to go out in the vault to get it, and I said to the stenographer, "As soon as you finish with this work, you gather up all these deeds and return them to the respective parties," and that was done. I distinctly recall that we could not reach one party—I think it was a Mr. Doneen—and that particular deed remained in the office for a long, long time, and finally he called for it, and I told him that it was ancient history and he tore up the deed and threw it in the wastebasket. I think that that covers substantially all of my connection with the matter. I might add these deeds were never delivered to the Union Trust Company, because the committee which called on me never had authorized me to deliver them, and the understanding was that unless there was an arrangement made satisfactory, or a substantial number came in, that they would not dare to have them delivered.

Q. Were you present personally at the meeting to which you refer, at the time the matter of these deeds was taken up and discussed by a number of these entrymen?—A. I am quite positive I was called down there and asked those questions.

Q. I now hand you Claimants' Exhibits No. 3 and No. 4, and ask you if you can identify these minutes, as therein set out, as covering the meeting at which you were present [handing paper to witness]?—

A. None of these matters were taken up while I was present at the meeting. I notice one of these dated in July. I think probably this first one, dated May 15, is the meeting that I referred to in my testimony, but I was only present and asked these questions and retired. I did not attend the meeting any further, and I was not present at any meeting held in July, 1907.

Mr. SHERIDAN. That is all.

Cross-examination by Mr. HUGHES:

Q. I will read from the record of the meeting held in the office of Finch & Campbell on the 15th of May, 1907. You have testified that you were called in at the meeting, at which a number of persons were

present, and asked certain questions, and subsequently employed concerning the organization of a corporation, and that the chairman told you that he would appoint a committee to take the matter up with you. I now call your attention to the last paragraph of Claimants' Exhibit No. 3, reading as follows:

And thereupon, upon motion of Mr. Sweeney, duly seconded by Mr. Finch, the chairman was authorized to appoint a committee of five which should organize a corporation for the purpose of acquiring the coal claims owned by those present and those of such other claim owners as might desire to join the corporation, the committee to secure deeds to the mining claims and issue receipts therefor, and take all necessary steps to complete the organization of the company, ready for the transaction of business.

I will ask you whether or not you remained present while any such resolution was being considered by the meeting?—A. I think not. I think it was stated that a committee would be appointed to take up that matter further with me, if deemed advisable.

Q. I will ask you if the resolution which I have read to you is the resolution in substance such as you were informed, after having had the inquiry propounded to you, would be adopted and a committee appointed?—A. I think it was; yes.

Q. I will ask you if Clarence Cunningham and Mr. Neill and Mr. Burbidge, or any of them, constituted the committee which came to see you?—A. I think Mr. Burbidge and Mr. Cunningham and Mr. Neill and possibly one other gentleman were on that committee; I am not sure about the five, whether there were five there or not.

Q. There are five on the committee, and Mr. Smith was not present at the meeting.—A. Well, I don't think so.

Q. I mean by "these matters" to refer to the matter about which you were called to the meeting for the purpose of asking you certain questions, and you say you were not present during any of the deliberations that took place, but remained only long enough to hear their questions and answer them?—A. Yes, sir; that is all.

Witness excused.

Mr. HUGHES. It is hereby stipulated by and between counsel for the Government and counsel for the claimants, with the consent and approval of the commissioner, that an adjournment be now taken to such time and place as shall be designated by the commissioner, notice thereof to be given by the commissioner to the respective counsel personally or by telegraph.

Mr. SHERIDAN. That arrangement is satisfactory to counsel for the Government.

(And thereupon the further hearing of this inquiry was adjourned pursuant to the above stipulation.)

STATE OF WASHINGTON,
County of Spokane, ss:

I, James M. Palmer, being first duly sworn, upon oath say:

That I am the stenographer who reported and took down in shorthand the attached transcript of testimony in shorthand, and that I thereafter transcribed the same into longhand; and that said transcript is a true, complete, and correct translation of my shorthand notes; that said attached transcript consisting and extending from page 1 to page fifteen hundred and three (1503), both inclusive, con-

tains all of the evidence offered and received upon said inquiry, at Seattle, Wash., between November 18 and 29, 1909. and at Spokane, Wash., between December 2 and December 13, 1909, both dates inclusive, together with all objections interposed by counsel, rulings thereon, and exceptions taken thereto.

(Signed)

JAMES M. PALMER.

Subscribed and sworn to before me this 15th day of December, 1909.

(Signed)

WM. J. MCGEE,

Commissioner.

IN THE DEPARTMENT OF THE INTERIOR.

BEFORE THE GENERAL LAND OFFICE.

In the matter of the inquiry concerning the legality of Coal Land Entries, Numbers One to Thirty-three, both inclusive, in the Juneau Land District in the Territory of Alaska, Kayak Recording District, made and claimed, respectively, by Andrew L. Scofield, Francis Jenkins, Charles J. Smith, Horace C. Henry, Ignatius Mullen, Henry White, Henry W. Collins, Fred C. Davidson, Michael Doneen, Frank F. Johnson, John G. Cunningham, Clarence Cunningham, A. B. Campbell, Henry Wick, Hugh B. Wick, Fred H. Mason, William E. Miller, Charles Sweeney, Byron C. Riblett, Fred Cushing Moore, Alfred Page, W. W. Baker, Frederick Burbidge, Reginald K. Neill, Joseph H. Neill, Miles C. Moore, John A. Finch, Walter B. Moore, Arthur D. Jones, Orville D. Jones, W. H. Warner, Frank A. Moore, Nelson B. Nelson.

I, William J. McGee, having been appointed by the First Assistant Secretary of the Interior a commissioner for the purpose of receiving the testimony in the above-entitled inquiry, do hereby certify that the foregoing pages from 1 to 1503, both inclusive, contain all of the testimony of all of the witnesses who appeared before me and testified in said inquiry; that said testimony was reduced to writing at the time it was delivered in the form of shorthand notes, and subsequently transcribed by James M. Palmer, the official stenographer, and by him reduced to writing in accordance with the stipulation entered into by the respective parties; that each of the witnesses was duly sworn to testify to the truth, the whole truth, and nothing but the truth; that said inquiry was commenced on November 18, 1909, and continued and adjourned from day to day until December 13, 1909.

In testimony whereof, I have hereunto set my hand this 15th day of December, 1909.

(Signed)

WM. J. MCGEE,

Commissioner.

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